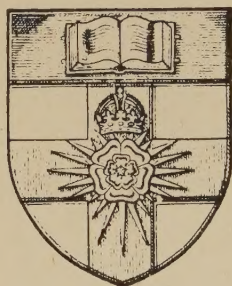


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Triable issue—Appropriate order to preserve parties interests—Pending action—Action prosecuted in good faith—Court having no power to vacate registration of pending action—Power to secure vacation by indirect means—Order to stay action unless entry vacated—Intimation to plaintiff that on vacating entry he would be granted interlocutory injunction on giving cross-undertaking as to damages—Whether proper for court to make order. **Norman v Hardy** [1974] 1 1170, ChD.

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Form of order—Personal or impersonal form—Order that entry 'be vacated'—Whether order should require defendant to remove caution. **Calgary and Edmonton Land Co Ltd v Dobinson** [1974] 1 484, ChD.

Pending action—

Action struck out by court as scandalous, frivolous and vexatious and an abuse of the process of the court—Decision upheld by Court of Appeal—Petition to appeal pending before House of Lords—Whether entry be vacated as proceedings not prosecuted in good faith—Land Charges Act 1925, s 2(6). **Calgary and Edmonton Land Co Ltd v Discount Bank (Overseas) Ltd** [1971] 1 551, ChD.

Matrimonial proceedings—Summons under Married Women's Property Act 1882—Wife, respondent in divorce suit, claiming declaration of entitlement to half share in proceeds of sale of the matrimonial home, and asking for sale, etc—Property in name of husband who had contracted to sell it—Registration vacated—Land Charges Act 1925, ss 2(1)(6), 20(6). **Taylor v Taylor** [1968] 1 843, CA.

Power of court to order vacation of registration—Order during pendency of proceedings—No claim or counterclaim for interest in land—Whether power to order vacation during pendency of proceedings—Land Charges Act 1925, s 2(6). **Heywood v BDC Properties Ltd (No 2)** [1964] 2 702, CA.

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Power of court to order vacation of registration—Summons—Action registered as *lis pendens* by non-counterclaiming defendants—Defendants not prosecuting proceedings—No power in court to vacate registration under statute—Order, as if on motion, for vacation under court's inherent jurisdiction—Land Charges Act 1925, s 2(6). **Heywood v BDC Properties Ltd (No 2)** [1964] 2 702, CA.

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Contract to widen, deepen and make good banks of river—

Bursting of banks—Flooding of adjoining land owned by successor in title to party to contract—Liability of board. **Smith v River Douglas Catchment Board** [1949] 2 179, CA.

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Amount of demand—Aggregate not to exceed estimated amount which would be produced by rate of 2d in £—Estimated amount—Whether allowance to be made for cost of calculation and bad debts—Land Drainage Act 1930, ss 20, 22(2). **R v Cambridgeshire County Council** [1936] 3 352, KBD.

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Injury sustained by person by reason of exercise of board's statutory powers—Statutory remedy—Compensation—Catchment board cleansing watercourse—Damage to plaintiff's bridge—Dredgings deposited on bank—Diversion of flood waters—Action for nuisance, alternatively, negligence, by plaintiff—Competence—Land Drainage Act 1930, ss 34(1) (3), 38(1). **Marriage v East Norfolk Rivers Catchment Board** [1949] 2 1021, CA.

Maintenance and repair of drainage works—

Failure to keep drainage works in repair—Flooding—Breach of statutory duty. **Smith v Cawdle Fen, Ely (Cambridge), Comrs** [1938] 4 64, KBD.

Maintenance and repair of drains—

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Maintenance and repair of river bank—

Bank some distance from main river—protection against flood—Whether 'bank' within Land Drainage Act 1930—Land Drainage Act 1930, ss 1, 7, 9, 11, 81. **North Level Comrs v River Welland Catchment Board** [1937] 4 684, ChD.

Maintenance and repair of river wall—

Negligent repair—Liability for misfeasance—Land Drainage Act 1930, s 34. **Kent and Porter v East Suffolk Rivers Catchment Board** [1940] 4 527, HL.

Maintenance and repair of dyke—

Positive duty to repair dyke imposed by local Act—Whether duty superseded by provisions of Land Drainage Act 1930, s 4(1)(a)(b) s 34. **Rippingale Farms Ltd v Black Sluice Internal Drainage Board** [1963] 3 726, CA.

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Circumstances in which right exercisable—Whether for maintenance of existing works only—Land Drainage Act 1930, s 34(4)—Land Drainage Act 1961, s 40(1). **Pattinson v Fanningley Internal Drainage Board** [1970] 1 790, QBD.

Right to deposit spoil on banks of watercourse—

Banks—Meaning—River board cleansing watercourse—Dredgings deposited on adjoining land—Exclusion of compensation where matter so removed deposited on the banks of the watercourse—Whether adjoining land 'banks'—Construction of enactment—Land Drainage Act 1930, s 38(1). **Jones v Mersey River Board** [1957] 3 375, CA.

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Right to drain from seaward to landward side of sea wall. *See* Sea wall—Right to drain from seaward to landward side of sea wall—Implied Crown grant, *post*.

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Implied Crown grant—Rights of drainage of upper landowner. *Symes and Jaywick Associated Properties Ltd v Essex Rivers Catchment Board [1936] 3 908, CA.*

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Caution—Official search on sale of property—Failure to disclose caution—Mistake of Land Registry—Transfer to purchaser—Charge on property by purchaser in favour of third party—Transfer and charge lodged for registration—Cautioner's objection to registration—Whether caution effective—Priority as between cautioners, transferee and chargee—Land Registration Act 1925, ss 55(1)(2), 59(1)—Land Registration Rules 1925 (S R & O 1925 No 1093), r 295. *Parkash v Irani Finance Ltd* [1969] 1 930, ChD.

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Scale fee—Not all work done to which scale fee applied—Whether scale fee chargeable—Solicitors' Remuneration (Registered Land) Order 1925 (S R & O 1926 No 2), art 1(d)(i), Sch (as substituted by Solicitors' Remuneration (Registered Land) Order 1953 (S I 1953 No 118)). *Re Taxation of Costs, Re A Solicitor* [1957] 1 427, CA.

Scale fee—Sale by order of court—Not all work completed to which scale fee applied—Whether scale fee chargeable—Solicitors' Remuneration (Registered Land) Order 1925 (S R & O 1926 No 2), art 1(d)(i), Sch (as substituted by Solicitors' Remuneration (Registered Land) Order 1953 (S I 1953 No 118)). *Re No 10, The Terrace, Hampton Wick, Middlesex* [1957] 1 87, ChD.

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Effect of registration on legal estate—

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Leaseholds—Vesting of one-day reversion after sale of leasehold term created by mortgage of leaseholds by sub-demise—Land Transfer Act 1875, s 13—Land Transfer Rules 1903 (S R & O 1903 No 1081), r 57—Land Registration Act (Apportionment) s 69(1). *Re King (decd)* [1963] 1 781, CA.

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Binding effect of covenant—Restrictive covenant entered on register against freehold title—Lease—Assignment of lease—No actual notice of covenant to assignee—Constructive notice—Land Registration Act 1925, ss 20, 50, 52. **White v Bijou Mansions Ltd** [1938] 1 546, CA.

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Whether an overriding interest. *See* **Husband and wife** (Deserted wife's right to remain in matrimonial home—Registered land—Overriding interest).

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Granted—Oral agreement, evidenced by memorandum in writing, to grant a tenancy for term exceeding three years—Whether 'overriding interest'—Land Registration Act 1925, s 70(1) (k). **City Permanent Building Society v Miller** [1952] 2 621, CA.Rectification of land register to give effect to overriding interest. *See* Rectification of register—Overriding interest—Rectification to give effect to overriding interest, *post*.

Right to remove fixtures at end of lease—

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Rights of person in actual occupation of land—

Actual occupation—Lessee allowing relative to occupy flat, rent free—Whether lessee in actual occupation of flat—Land Registration Act 1925, s 70(1)(g). **Strand Securities Ltd v Caswell** [1965] 1 820, CA.Actual occupation—Vendor in occupation—Whether person other than vendor may be in actual occupation—Land Registration Act 1925, s 70(1). **Hodgson v Marks** [1971] 2 684, CA.

Option in lease for lessee to purchase freehold reversion—Lessee in actual occupation—

Whether option an overriding interest—Option not protected by entry of notice, etc on register—Whether enforceable against purchaser of reversion—Land Registration Act 1925, s 70(1)(g). **Webb v Pollmount Ltd** [1966] 1 481, ChD.Tenant in occupation of dwelling-house—Purchase and mortgage of house by landlord—Registration subject to overriding interest of tenant in occupation—Land Registration Act 1925, s 70(1). **Woolwich Equitable Building Society v Marshall** [1951] 2 769, ChD.Tenant in occupation of dwelling-house—Purchase and mortgage of house by landlord—Registration subject to overriding interest of tenant in occupation—Land Registration Act 1925, s 70(1)(g). **Mornington Building Society v Kenway** [1953] 1 951, ChD.Unpaid vendor's lien—Vendor remaining in occupation as lessee after sale of registered land—Subsequent charge on property by purchaser in favour of third party—Vendor later going out of occupation—Whether overriding interest extinguished—Land Registration Act 1925, s 70(1)(g). **London and Cheshire Insurance Co Ltd v Laplagrene Property Co Ltd** [1971] 1 766, ChD.

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Concurrent applications for registration—

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Entries protecting dealings off the register—

Deposit of land certificate with bank by registered proprietors to secure debt—Notice of deposit registered—Agreement by registered proprietors to execute legal mortgage in favour of bank on demand—Subsequent execution of mortgage under seal—Registered proprietors thereafter contracting to sell land—Purchasers entering caution against dealings on register in their favour—Subsequent application by bank to register mortgage as a charge—Whether bank entitled to rely on notice of deposit to protect mortgage—Whether mortgage subject to purchasers' interest under contract—Land Registration Act 1925, s 106. **Barclays Bank Ltd v Taylor** [1973] 1 752, CA.

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Cautions entered against mortgagee's interest in land—Mortgage the subject of High Court action—Action struck out by High Court and Court of Appeal—Petition to appeal pending before House of Lords—Whether a court had decided that mortgagee entitled to any estate right or interest in any registered land—Land Registration Act 1925, s 82(1). *Calgary & Edmonton Land Co Ltd v Discount Bank (Overseas) Ltd* [1971] 1 551, ChD.

Circumstances justifying rectification—

Circumstances in which rectification deemed just—Overriding interest noted on first registration—Exception and reservation of right of way for all persons entitled to the same contained in conveyance of 1939—Whether easement created by the exception or whether exception referred to existing rights—Whether decision to cancel entry would determine existence of easement so as to give rise to *res judicata*—Discretion of chief land registrar—Land Registration Act 1925, ss 70(2), 82(1)(h)—Land Registration Rules 1925 (S.R. & O. 1925 No 1093), r 298. *Re Freehold Land in Dances Way, West Town, Hayling Island, Hants* [1962] 2 42, CA.

Entry obtained by fraud—Circumstances in which court satisfied—Entry obtained by fraud—Costs—Land Registration Act 1925, s 82(1)(d). *Re Leighton's Conveyance, Re Land Registration Act 1925* [1936] 3 1033, CA.

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Effect on dispositions before date of rectification—Restrictive covenant—Title of servient tenement unregistered—Covenant registered against servient tenement—Title of servient tenement subsequently registered—Notice of restrictive covenant omitted from register—Lease of servient tenement subsequently granted—Lease assigned to defendants—Defendants having no knowledge of covenant—Plaintiff owner of dominant tenement—Plaintiff obtaining rectification of register—Notice of restrictive covenant entered—Whether covenant binding on defendants—Land Registration Act 1925, s 82. *Freer v Unwins Ltd* [1976] 1 634, ChD.

Interlocutory motion—

Motion to vacate caution—Jurisdiction—Cautioner alleging existence of contract for sale of land—Cautioner failing to make out *prima facie* case—Failure to adduce memorandum of contract—Jurisdiction to vacate caution on motion. *Tiverton Estates Ltd v Wearwell Ltd* [1974] 1 209, CA.

Motion to vacate caution—Jurisdiction—Applications to by by 'summons at chambers'—Inherent jurisdiction to order vacation of caution on motion—Land Registration Act 1925, ss 82(1), 138(2). *Calgary and Edmonton Land Co Ltd v Dobinson* [1974] 1 484, ChD.

Triable issue—Appropriate order to preserve parties' interests—Contract for sale of land—Cautions lodged by purchasers to protect interest in land—Notice to complete served by vendor—Vendor purporting to rescind contract on expiry of notice—Action by purchasers for specific performance—Motion by vendor to vacate cautions—Evidence that period of notice extended by oral agreement justifying trial—Appropriate order to preserve purchasers' rights to specific performance and vendor's right to damages if purchasers should fail in action. *Clearbrook Property Holdings Ltd v Verrier* [1973] 3 614, ChD.

Loss suffered by reason of rectification—

Indemnity—Overriding interest alleged—Time at which to determine whether person was in actual occupation of land—Land Registration Act 1925, ss 70(1)(g), 83(1). *Re Boyle's Claim* [1961] 1 620, ChD.

Overriding interest—

Rectification to give effect to overriding interest—Actual occupation—Use of land to park car—Strip of disputed land between adjoining properties—Strip conveyed to plaintiffs' predecessor with one property—Strip used for purpose of parking car—Strip mistakenly included in conveyance of adjoining property to defendants' predecessor—Defendants' predecessor registering title—Filed plan including strip—Whether plaintiffs' predecessor having overriding interest—Whether use of strip for parking car amounting to actual occupation—Land Registration Act 1925, ss 70(1)(g), 82(3). *Epps v Esso Petroleum Co Ltd* [1973] 2 465, ChD.

Rectification affecting title of proprietor in possession—

Proprietor contributing to mistake in registration—Discretion of court—Owner conveyed plot to plaintiff and later, owing to mistake, conveyed land, including plaintiff's plot, to defendant—Defendant applied for registration, lodged transfer, and was registered as proprietor—Defendant did not know of plaintiff's title to plot—After long absence plaintiff visited plot and saw defendant's building work on it—Plaintiff applied for rectification of register—Defendant's lodgment of transfer containing misdescription of land held to have contributed to registrar's mistake—Exercise of court's discretion where defendant contributed to mistake or stood by—Land Registration Act 1925, s 82(1)(3)(a). *Re Sea View Gardens* [1966] 3 935, ChD.

Proprietor contributing to mistake in registration—Land erroneously included in registered title of adjoining land—Contribution to mistake by registered proprietor—'Void' disposition—Land Registration Act 1925, s 82(3)(a)(b). *Re 139 High Street, Deptford* [1951] 1 950, ChD.

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Rectification of register (cont)—

Rectification affecting title of proprietor in possession (cont)—

Unjust not to rectify register against proprietor in occupation—Circumstances making it unjust not to order rectification—Indemnity—Entitlement of proprietor to indemnity on rectification—Applicants not entitled to indemnity on refusal of rectification—Land Registration Act 1925, s 82(3)(c). *Epps v Esso Petroleum Co Ltd* [1973] 2 465, ChD.

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Matrimonial home—

Rights of non-occupying spouse—Registration as a land charge. *See* **Husband and Wife** (Matrimonial home—Land charge—Registration).

Restrictive covenant—

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Search—

Mistake by Land Registry—

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Sub-lease—

Application to register sub-lease. *See* First registration—Leasehold—Application to register sub-lease, *ante*.

Transfer—

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Leaseholds—

Implied covenants on transfer of leaseholds—Covenants for title—Assignment of leasehold premises compulsorily acquired in dilapidated condition—Breaches of repairing covenants during currency of lease—Whether acquiring authority should covenant to indemnify assignor—Assignor a personal representative of deceased lessee—Land Registration Act 1925, s 24(1)—Land Registration Rules 1925 (S R & O 1925 No 1093), r 115. *Re King (decd)* [1963] 1 781, CA.

Merger—

Agreement for sale of registered land and transfer—Whether contract merged in transfer. *Knight Sugar Co Ltd v Alberta Ry & Irrigation Co* [1938] 1 266, PC.

Purchase price remaining unpaid—

Deed of transfer containing acknowledgment of receipt of purchase price—Purchase price entered on proprietorship register—Subsequent charge on property in favour of third party—Chargee unaware of acknowledgment of receipt of purchase money in deed of transfer—Whether entry on register sufficient evidence of payment of purchase money to preclude vendor enforcing lien against chargee—Law of Property Act 1925, s 68—Land Registration Rules 1925 (S R & O 1925 No 1093), r 247(1). *London and Cheshire Insurance Co Ltd v Laplagrene Property Co Ltd* [1971] 1 766, ChD.

Validity—

Transfer not in prescribed form—Land Registration Rules 1925 (S R & O 1925 No 1093), rr 74, 121(1), 123(1), 322(1). *Morelle Ltd v Wakeling* [1955] 1 708, CA.

Vendor's lien—

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Rights of person in actual occupation of land. *See* Overriding interest—Rights of person in actual occupation of land—Unpaid vendor's lien, *ante*.

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LANDLORD AND TENANT

Agreement for lease—

Conditional acceptance—

Subject to a lease to be drawn up by our clients' solicitors. *H C Berry Ltd v Brighton and Sussex Building Society* [1939] 3 217, ChD.

Subject to the terms of a formal lease. *Spottiswoode, Ballantyne & Co Ltd v Doreen Appliances Ltd and G Barclay (London) Ltd* [1942] 2 65, CA.

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Illegality—

Use of premises—Town and country planning—User requiring planning permission—Permission refused—Landlord's right to recover rent—Town and Country Planning Act 1947, s 12(1). *Best v Glenville* [1960] 3 478, CA.

Occupation pending completion—

Tenant or licensee—National Conditions of Sale applied so far as applicable to sale by private treaty and not inconsistent—Condition that purchaser let into occupation should be licensee—Rent paid in advance—Whether occupation pending completion and during period covered by rent paid was that of tenant or licensee—National Conditions of Sale (17th Edn) conditions, 7. *Joel v Montgomery & Taylor Ltd* [1966] 3 763, ChD.

Premium—

Balance of premium not paid—Rent paid in advance—Action by proposing lessor for rescission—Application for payment of balance of premium into court and, in default, delivery of possession—*Greenwood v Turner order*—Order inappropriate where rent paid to future date. *Joel v Montgomery & Taylor Ltd* [1966] 3 763, ChD.

Repudiation—

What amounts to repudiation—Whether objecting to form of draft lease amounting to repudiation. *Sweet & Maxwell Ltd v Universal News Services Ltd* [1964] 3 30, CA.

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Agreement for rent increase. *See* Rent—Agreement for increase, *post*.

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- Agricultural holding—
 - Compulsory purchase—
 - Compensation—Assessment. *See* **Compulsory purchase** (Compensation—Assessment—Agricultural holding).
 - Generally. *See* **Agricultural holding**.
- Agricultural worker—
 - Tied cottage. *See* **Agriculture** (Agricultural worker—Tied cottage).
- Allotment. *See* **Allotment**.
- Alterations—
 - Breach of covenant. *See* **Covenant—Alterations—Breach of covenant against alterations, post**.
- Arrears of rent—
 - Forfeiture of lease. *See* **Forfeiture of lease—Arrears of rent, post**.
- Assignment of lease—
 - Assignment by company—
 - Voluntary winding-up of lessee company—Assignment of lease for value—Permitted assignment—Future performance of covenants—Landlord's right to have sufficient assets of company set aside to meet future rent and provide for performance of other covenants. **Re House Property and Investment Co Ltd** [1953] 2 1525, ChD.
 - Consent of landlord not to be unreasonably withheld—
 - Right of proposed assignee to acquire freehold—Reasonable ground for refusing consent—Limited company tenant of property including mews houses—Company proposing to assign leasehold interest in one of houses to private individual—Assignee as individual qualifying for statutory right to acquire freehold of house after five years' residence—Not purpose of assignment to enable assignee to acquire freehold—Assignment adversely affecting value of landlords' reversion in consequence of proposed assignee's prospective right to acquire freehold—Whether reasonable ground for landlords' refusing consent to assignment. **Norfolk Capital Group Ltd v Kitway** [1976] 3 787, CA. ay [1976] 3 787, CA.
 - Right of proposed assignee to acquire freehold—Reasonable ground for refusing consent—Relevant circumstances—Refusal relating to attribute of personality of proposed assignee and user of premises—Premises part of large estate owned by landlords—Management and development of estate likely to be impeded if tenant enabled to acquire freehold—Landlords liable to suffer financial loss—Whether refusal of consent to assignment reasonable. **Bickel v Duke of Westminster** [1976] 3 801, CA.
 - Covenant against assignment—
 - Absolute covenant against assignment—Whether term to be implied that consent to assignment not to be unreasonably withheld—Landlord and Tenant Act 1927, s 19(1). **Property and Bloodstock Ltd v Emerton** [1967] 3 321, CA.
 - Consent of landlord. *See* **Covenant against assignment without consent, post**.
- Estoppel—
 - Underlessee in possession and paying rent—Whether defendants estopped from denying that they were assignees of head lease. **Official Trustee of Charity Lands v Ferriman Trust Ltd** [1937] 3 85, KBD.
- Notice of assignment—
 - Covenant in head lease to give notice of assignment or underlease—Term derived out of underlease—Application of covenant. **Portman v J Lyons & Co Ltd** [1936] 3 819, ChD.
- Notice to quit—
 - Assignment of contractual tenancy after notice to quit given but before its expiration—Assignee becoming statutory tenant on expiration of notice. **Regional Properties Ltd v Frankenschwerth** [1951] 1 178, CA.
- Obligation to pay rent—
 - Assignee—Express covenant with assignor to pay rent—Assignment of benefit of covenant to landlord. **Butler Estates Ltd v Bean** [1941] 2 793, CA.
 - Assignments with indemnity against rents and covenants—One assignment to limited company—Assignment to original lessee of benefit of subsequent covenant of indemnity on the liquidation of company. **Josselsqn v Borst (Gliksten, third party)** [1937] 3 722, CA.
 - Assignee with licence of landlord re-assigning lease—Express covenant by assignee with landlord included in licence to assignee—Liability of assignee after re-assignment. **J Lyons (Valuation Officer) Ltd v Knowles** [1943] 1 477, CA.
 - Covenant by assignor to pay rent in event of non-payment by assignee—Mortgage of lease by assignee—Non-payment of rent by assignee—Payment by assignor under guarantee—Order for possession against assignee granted to mortgagee—New lease granted to assignor by head landlord subject to and with benefit of assignee's lease—Whether receipt of payments from assignor under guarantee waived landlord's rights to forfeit assignee's lease—Whether right to forfeit waived by making new lease subject to assignee's lease—Whether assignor as reversioner to assignee's lease entitled to forfeit that lease for rent in arrear when assignor became reversioner. **London and County (A & D) Ltd v Wilfred Sportsman Ltd (Greenwoods (Hosiers and Outfitters) Ltd, Third Party)** [1970] 2 600, CA.
 - Covenant by assignor with landlord—Covenant by lessee to pay rent and service charges—Default in payment—Assignment of lease by lessee—Receipt for unpaid instalments of rent, etc given by lessor to facilitate assignment—Subsequent assignment by lessor of reversion—Whether obligation to pay rent etc remaining with original lessee after assignment of lease—Whether assignees of reversion entitled to enforce obligation against original lessee. **Arlesford Trading Co Ltd v Servansingh** [1971] 3 113, CA.
- Rights and liabilities of assignee—
 - Assignee of part of premises—Division of premises included in lease—Assignee of part forced to pay whole rent—Contribution from assignee of other part—Recoupment. **Whitham v Bullock** [1939] 2 310, CA.

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Assignment of lease (cont)—

Sale of land. *See* **Sale of land** (Leasehold interest—Assignment).Avoidance of lease. *See* **Lease—Avoidance, post.**Beneficiary granting tenancy. *See* **Tenancy—Grant—Beneficiary granting tenancy, post.**

Breach of covenant—

Persons entitled to sue tenant in respect of breach—

Assignment of reversion on lease—Breach occurring before assignment—Whether assignor of reversion entitled to sue after assignment for breach of covenant before assignment—Law of Property Act 1925, s 141. **Re King (decd)** [1963] 1 781, CA.

Breach of covenant to repair—

Defence—

Regulations prohibiting repair above certain cost without licence—Whether breach excused by regulations—Defence (General) Regulations 1939, reg 56A. **Eyre v Johnson** [1946] 1 719, KBD.Regulations prohibiting repair above certain cost without licence—Whether breach excused by regulations—Defence (General) Regulations 1939, reg 56A, para 2, Sch 6, Pt 3—Control of Building Operations Order 1941 (S R & O 1941 No 1986), para 2. **Maud v Sanders** [1943] 2 783, KBD.

Expenses of landlord in relation to breach—

Declaration on grant of leave to institute proceedings—Law of Property Act 1925, s 146(3)—Leasehold Property (Repairs) Act 1938, s 2. **Re An Intended Action between Phillips and Price** [1958] 3 386, ChD.Declaration on grant of leave to institute proceedings—Surveyors' and solicitors' costs—Law of Property Act 1925, s 146(3)—Leasehold Property (Repairs) Act 1938, s 2. **Re Metropolitan Film Studios Ltd v Twickenham Film Studios Ltd (intended action)** [1962] 3 508, ChD.Surveyors' and solicitors' charges. **Lloyds Bank Ltd v Lake** [1961] 2 30, QBD.

Leave to institute proceedings—

Conditions to be satisfied before leave may be given—Clearance order and compulsory purchase order made by local authority—Leasehold Property (Repairs) Act 1938, s 1(5), as amended by Landlord and Tenant Act 1954, s 51(2)(c),(d). **Re An Intended Action between Phillips and Price** [1958] 3 386, ChD.Conditions to be satisfied before leave may be given—Time at which satisfaction of statutory conditions to be ascertained—Discretion of court to grant leave—Exercise of discretion—Interlocutory nature of relief—Leasehold Property (Repairs) Act 1938, s 1(5), as amended by Landlord and Tenant Act 1954, s 51(2)(c),(d). **Re Metropolitan Film Studios Ltd v Twickenham Film Studios Ltd (intended action)** [1962] 3 508, ChD.Necessity where counter-notice served by lessee—Action against former assignee who had assigned his leasehold interest before action—Defence of want of notice specifying breaches and of leave to proceed—Whether defendant 'lessee'—Law of Property Act 1925, s 146—Leasehold Property (Repairs) Act 1938, s 1(3). **Cusack-Smith v Gold** [1958] 2 361, QBD.Premises mortgaged by lessee by way of legal charge—Lessee in possession of premises—Notice of breach given to lessee and also to mortgagee—No counter-notice by lessee—Counter-notice by mortgagee—Whether leave of court required by lessors before commencing action against lessee for damages and possession—Leasehold Property (Repairs) Act 1938, s 1(2),(3). **Church Comrs for England v Veri-best Manufacturing Co Ltd** [1956] 3 777, QBD.Standard of proof of alleged breach of covenant—Prima facie case sufficient—Leasehold Property (Repairs) Act 1938, s 1(4),(5), as amended by Landlord and Tenant Act 1954, s 51(2). **Sidnell v Wilson** [1966] 1 681, CA.

Notice of forfeiture—

Retrospective operation of statute—Leasehold Property (Repairs) Act 1938, ss 1, 5. **National Real Estate and Finance Co Ltd v Hassan** [1939] 2 154, CA.

Notice to remedy breach served on tenant—

Counter-notice served by tenant—Assignment of lease—Surrender by assignee—Action for damages for breach of covenant commenced by landlord without obtaining leave of court—Whether action maintainable—Leasehold Property (Repairs) Act 1938, s 1(3). **Baker v Sims (Alsen Properties Ltd third party)** [1958] 3 326, CA.Counter-notice served by tenant—Assignment of lease—Leave obtained to commence proceedings against tenant only—Judgment in default of appearance against assignee—Whether judgment irregular—Law of Property Act 1925, s 146(1)—Leasehold Property (Repairs) Act 1938, s 1(3). **Church Comrs for England v Kanda** [1957] 2 815, CA.Notice also alleging breach of non-existent covenant not to sub-let—Validity of notice—Law of Property Act 1925, s 146(1)—Leasehold Property (Repairs) Act 1938, s 1(2), as amended by Landlord and Tenant Act 1954, s 51(2)(b). **Silvester v Ostrowska** [1959] 3 642, QBD.

Specific performance—

Jurisdiction to make order requiring landlord to repair—Circumstances in which order will be made. **Jeune v Queens Cross Properties Ltd** [1973] 3 97, ChD.

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Forfeiture of lease—Relief against forfeiture. *See* **Relief against forfeiture—Immoral user of premises—Suffering premises to be used as brothel, post.**Letting premises for use as brothel. *See* **Criminal law** (Brothel—Landlord letting premises for use as brothel).

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Plans approved by lessor—Later application by lessee for approval of new plans—Refusal of approval by lessor—Whether discretion to withhold approval absolute—Whether lessee bound to build in accordance with approved plans. **Comr for Railways v Avrom Investments Proprietary Ltd** [1959] 2 63, PC.

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Building lease (cont)—

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Applicability—Whether doctrine of frustration applicable to building lease. *Leightons Investment Trust Ltd v Cricklewood Property and Investment Trust Ltd* [1945] 1 252, HL.

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Amendment—Landlord a company—Wrong company made respondent to tenant's originating summons—Summons amended by making landlord company respondent—Amendment not made within time prescribed for making application—Whether amendment to be allowed—Landlord and Tenant Act 1954, s 29(3)—RSC Ord 53D, r 6(3), Ord 70, r 1. *Re Nos 55 and 57, Holmes Road, Kentish Town* [1958] 2 311, ChD.

Answer—Statement of landlord's objections to proposed terms—Failure of landlord to state, in his answer to tenants' originating application, his objection to terms proposed by tenants—Whether court required to hear evidence as to reasonableness of terms—Landlord and Tenant Act 1954, ss 29(1), 33, 34, 69(2)—County Court Rules 1936 (as amended), Ord 40, r 8(2), Form 336. *Morgan v Jones* [1960] 3 583, CA.

Application by tenant not served—Whether landlord may apply for dismissal for want of prosecution. *Pike v Michael Nairn & Co Ltd* [1960] 2 184, ChD.

Application out of time—Tenancy having terminated—Locus standi of tenant—Request by tenant for new tenancy—Date specified for beginning of new tenancy—Existing tenancy terminating immediately before that date—Tenant failing to make application for new tenancy until after that date—Whether application should be struck out—Landlord and Tenant Act 1954, ss 24(1), 26(5). *Meah v Sector Properties Ltd* [1974] 1 1074, CA.

Filing of answer by landlords—Fixing of date for hearing—No objection made by landlords to validity of application until after time limits for application expired—Jurisdiction of court to hear application—Whether time limits procedural and capable of being waived—Landlord and Tenant Act 1954, s 29(3). *Kammins Ballrooms Co Ltd v Zenith Investments (Torquay) Ltd* [1970] 2 871, HL.

Form—Tenant requesting new tenancy 'upon terms of current tenancy'—Current lease for seven years—Tenant intending to ask for lease for 14 years—Validity of request—Need to state duration of new term—Landlord and Tenant Act 1954, ss 24(1), 26 (1)(3)(5)(6)—Landlord and Tenant (Notices) Regulations 1954 (S.I. 1954 No 1107), Appendix, Form 8. *Sidney Bolsom Investment Trust Ltd v E Karmios & Co (London) Ltd* [1956] 1 536, CA.

Joint tenants—One joint tenant only applying—Applicant in sole occupation, carrying on former partnership business—Whether applicant 'the tenant' and so entitled to apply for grant of new tenancy—Landlord and Tenant Act 1954, ss 24(1), 41. *Jacobs v Chaudhuri* [1968] 2 124, CA.

Landlord local authority—Reversion acquired by local authority after date of tenant's request for new tenancy—Opposition to grant of new tenancy—Application to government department for certificate—Notice served on tenant within two months of request—Effect of notice on tenant's application—Landlord and Tenant Act 1954, s 57(4)(b). *X L Fisheries Ltd v Leeds Corp'n* [1955] 2 875, CA.

Originating summons—Date of hearing—Practice. *See Originating summons* (Date of hearing)—Requirement of fixed date for hearing—Adjournment—Hearing 'on a day to be fixed'—New business tenancy).

Parties to application—Landlord—Mortgagee—Receiver in receipt of rents and profits appointed by mortgagee of landlord between making and hearing of tenant's application—Mortgagee in possession—Landlord and Tenant Act 1954, ss 44(1), 67—CCR Ord 40, r 21(2). *Meah v Mouskos* [1963] 3 908, CA.

Parties to application—'Landlord'—Whether landlord ceased to be such on becoming a statutory tenant—Whether proceedings thereafter properly constituted without joining superior landlords—Landlord and Tenant Act 1954, s 44(1). *Piper v Muggleton* [1956] 2 249, CA.

Premature application—Landlords objecting to validity of application—Desirability of setting out objection in landlords' answer. *Kammins Ballrooms Co Ltd v Zenith Investments (Torquay) Ltd* [1970] 2 871, HL.

Premature application—Landlords objecting to validity of application—Effect of landlords deliberately withholding notice of objection until time limits for application expired. *Kammins Ballrooms Co Ltd v Zenith Investments (Torquay) Ltd* [1970] 2 871, HL.

Time—Period expiring on Sunday or holiday. *See County Court* (Time—Period prescribed by statute expiring on a Sunday or holiday)—Period within which application to be made to court for new business tenancy expired on Easter Monday).

Tribunal—Application refused by tribunal and notice of appeal served by tenant before commencement of Landlord and Tenant Act 1954—Prohibition imposed by 1954 Act on continuation of proceedings pending an application to tribunal—Whether appeal from tribunal 'Proceedings...pending on an application...to the tribunal'—Landlord and Tenant Act 1954, Sch IX, para 8. *Etam Ltd v Forte* [1954] 3 311, CA.

Business—

Sunday school carried on by tenant for one hour a week in loft or part of premises which had been a shop—No payment demanded by tenant—Whether a 'business'—Landlord and Tenant Act 1954, s 23(1)(2). *Abernethie v A M & J Kleiman Ltd* [1969] 2 790, CA.

Compensation for goodwill in respect of business premises. *See Compensation for goodwill in respect of business premises, post.*

LANDLORD AND TENANT (cont)**Business premises (cont)—****Compensation for refusal of new tenancy—**

Premises continuously occupied for five years for the purposes of carrying on the tenants' business—Successive businesses of same type conducted by successive tenants—Landlord and Tenant Act 1954, Sch 9, para 5(1). *Cramas Properties Ltd v Connaught Fur Trimmings Ltd* [1965] 2 382, HL.

Continuation of tenancy—

Severance of reversion—Notice to determine—Part of premises ceasing to be protected—Tenants of business premises subletting part of premises—Sub-tenants occupying part for business purposes—Sub-tenants acquiring lease from landlord of their part of premises to commence on expiry of tenants' term—Right of sub-tenants after expiry of tenants' lease to give tenants notice to quit part of premises occupied by sub-tenants—Law of Property Act 1925, s 140(1)—Landlord and Tenant Act 1954, ss 23(1), 24(3)(a). *William Skelton & Son v Harrison & Pinder Ltd* [1975] 1 182, QBD.

Surrender—Provision for continuation of no effect if tenancy coming to end by surrender—Continuation despite surrender in case of an instrument of surrender executed within specified period—Instrument of surrender—Meaning—Lease conferring option on tenant to acquire freehold—Option exercisable by three months' notice in writing—Exercise of option by tenant—Whether on expiry of three months' notice tenancy coming to end by surrender—Whether notice exercising option an 'instrument of surrender'—Landlord and Tenant Act 1954, s 24(2)(as amended by the Law of Property Act 1969, s 4(1)). *Watney v Boardley* [1975] 2 644, ChD.

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Applications to court—Court's power to authorise contracting out of statutory provisions where tenancy for term of years certain—Joint applications for authorisation—Appointments for hearing—Urgent cases—Landlord and Tenant Act 1954, s 38(4) (added by the Law of Property Act 1969, s 5). *Practice Direction* [1973] 1 769, ChD.

Term of years certain—Court's power to authorise contracting out of statutory provisions where tenancy for term of years certain—Proposed tenancy for fixed period of six months—Whether six months' term of years—Landlord and Tenant Act 1954, s 38(4), (added by the Law of Property Act 1969, s 5). *Re Land and Premises at Liss, Hants* [1971] 3 380, ChD.

Costs of proceedings for new tenancy—

County court. *See* County court (Costs—Landlord and tenant—Business premises—Application for new tenancy).

Terms of tenancy in dispute—No dispute that new tenancy should be granted—Rent determined at figure intermediate between rents proposed by the two parties—Proper order no costs on either side—Landlord and Tenant Act 1954, ss 24(1), 29(1). *Le Witt v Cannon Brookes* [1956] 3 676, CA.

Terms of tenancy in dispute—Tenants asking for 14 year lease, seven year lease granted—Rent nearer to figure of tenants' proposal—Landlord to pay half tenants' costs. *Harewood Hotels Ltd v Harris* [1958] 1 104, CA.

Duration of new tenancy—

Matters to be considered—Landlord and Tenant Act 1954, s 33. *Upsons Ltd v E Robins Ltd* [1955] 3 348, CA.

Power to insert option for landlord to determine during term—Landlord and Tenant Act 1954, ss 30(1)(f), 33. *McCombie v Grand Junction Co Ltd* [1962] 2 65, CA.

Power to insert option for landlord to determine during term—Factors to be considered—Discretion of court—Landlord and Tenant Act 1954, s 33. *London and Provincial Millinery Stores Ltd v Barclays Bank Ltd* [1962] 2 163, CA.

Regard had to terms of previous leases granted to tenant in respect of the premises—Landlord and Tenant Act 1954, s 33. *Betty's Cafés Ltd v Phillips Furnishing Stores Ltd* [1958] 1 607, HL.

Fixtures—

Continuation by statute of contractual sub-tenancy—Right of mesne landlord, conferred by the lease, to remove fixtures lost by continuation of sub-tenancy beyond the duration of the mesne landlord's lease—Whether sub-tenant had constructive notice of right of removal—Right of removal not an equitable easement and not registrable as a land charge—Land Charges Act 1925, s 10(1), Class D(iii)—Landlord and Tenant Act 1954, ss 23(1)(3), 24(1)—Land Registration Act 1925, s 70(1). *Poster v Slough Estates Ltd* [1968] 3 257, ChD.

Improvements—

Compensation. *See* Improvements—Business premises—Compensation, *post*.

Interim continuation of tenancy pending determination by court—

Premature application for new tenancy—No waiver or acquiescence by landlords—Whether premature application an 'application to the court' having effect of prolonging tenancy—Landlord and Tenant Act 1954, s 64. *Zenith Investments (Torquay) Ltd v Kammins Ballrooms Co Ltd (No 2)* [1971] 3 1281, CA.

LANDLORD AND TENANT (cont)**Business premises (cont)—**

Interim continuation of tenancy pending determination by court (cont)—

Tenancy terminating at expiration of three months from date when application finally disposed of—Notice by landlord to terminate tenancy—Application for new tenancy refused—Appeal dismissed—Leave to appeal to the House of Lords refused by Court of Appeal—Date of termination of tenancy—When proceedings on appeal are 'finally disposed of'—Time for appealing—Landlord and Tenant Act 1954, ss 64(1)(c), 64(2). **Re 20 Exchange Street, Manchester** [1956] 3 490, ChD.

Landlord's notice of willingness to grant new tenancy—

Landlord—Notice served only by superior landlord more than two months after tenant's claim—Whether valid—Landlord and Tenant Act 1927, ss 4(1), proviso(b), 5(1), 8(1). **Rackett v Aston & Co Ltd** [1948] 2 19, CA.

What term and rent appropriate for new lease—Landlord and Tenant Act 1927, ss 4(1)(b),(3), 5(5). **Rialto Cinemas Ltd v Wolfe** [1955] 2 530, QBD.

New tenancy—

Application for new tenancy. *See* Business premises—Application for new tenancy, *ante*.

Compensation for refusal of new tenancy. *See* Business premises—Compensation for refusal of new tenancy, *ante*.

Costs proceedings for new tenancy. *See* Business premises—Costs of proceedings for new tenancy, *ante*.

Duration of new tenancy. *See* Business premises—Duration of new tenancy, *ante*.

Opposition to grant of new tenancy. *See* Opposition to grant of new tenancy of business premises, *post*.

Refusal—Compensation. *See* Business premises—Compensation for refusal of new tenancy, *ante*.

Terms of new tenancy. *See* Business premises—Terms of new tenancy, *post*.

Notice by landlord to terminate tenancy—

Application by tenant for new tenancy—Requirements for making application—Notice by tenant to landlord of unwillingness to give up possession—Landlord to be 'duly notified' of tenant's unwillingness—Tenant's notice not received by landlord within two months of landlord's notice—Tenant applying for new tenancy—Whether landlord 'duly notified'—Whether court having power to entertain tenant's application—Landlord and Tenant Act 1954, ss 25(5), 29(2). **Chiswell v Griffon Land and Estates Ltd** [1975] 2 665, CA.

Compensation—Tenant giving counter-notice of intention to vacate premises—Whether counter-notice revocable—Whether landlord obtaining indefeasible right to obtain possession without payment of compensation—Landlord and Tenant Act 1954, ss 25(5), 29(2). **Re 14 Grafton Street, London W1** [1971] 2 1, ChD.

Generally. *See* Notice to quit—Business premises, *post*.

Notice specifying date earlier than date on which apart from statute tenancy would have come to an end by effluxion of time—Date tenancy would have come to an end—Notice purporting to terminate tenancy on last date of term—Whether notice specifying date earlier than date tenancy would have come to an end—Landlord and Tenant Act 1954, s 25(4). **Re Crowhurst Park** [1974] 1 991, ChD.

Statement of grounds on which landlord would oppose application for new tenancy—Inaccurate statement—Landlord trustee for company—Intention that company should occupy premises for purpose of company's business—Statement that landlord intended to occupy for purposes of landlord's business—Validity of notice—Landlord and Tenant Act 1954, s 25. **Sevenarts Ltd v Busvine** [1969] 1 392, CA.

Validity—Form of notice—Prescribed form—Notice substantially to like effect—Notice informing tenant of right to apply for new tenancy within specified time limit—Notice stating that time running from receipt of notice by tenant—Prescribed form stating that time running from giving of notice by landlord—Whether notice given by landlord 'substantially to the like effect' as prescribed form—Landlord and Tenant (Notices) Regulations 1957 (S I 1957 No 1157), reg 4—Landlord and Tenant (Notices) Regulations 1969 (S I 1969 No 1771), reg 3, Appendix I, Form 7. **Sun Alliance and London Assurance Co Ltd v Hayman** [1975] 1 248, CA.

Notice to quit—

Generally. *See* Notice to quit—Business premises, *post*.

Validity. *See* Validity of notice to quit—Business premises, *post*.

Occupied for business purposes—

Occupation—Vacation of premises by tenant—Circumstances forcing tenant to leave premises—Premises damaged by fire and incapable of occupation for business purposes—Tenant vacating premises with intention of returning to carry on business when premises repaired—Whether during absence of tenant premises continuing to be 'occupied' by him—Landlord and Tenant Act 1954, s 23(1). **Morrison Holdings Ltd v Manders Property (Wolverhampton) Ltd** [1976] 2 205, CA.

Seasonal business—Active only in holiday seasons, inactive in winter—Agreement by tenant to employ a manager for a year—Manager to have full control of business and all profits in return for agreed sum—Keys of premises returned to tenant at end of summer season—Agreement a sham as regards employment of manager—Whether premises occupied by tenant for the purposes of a business during next winter—Landlord and Tenant Act 1954, ss 23(1), 25(1). **Teasdale v Walker** [1958] 3 307, CA.

Tenant carrying on business of letting furnished service apartments in premises—Tenant living in basement flat of premises—Tenant and servants having access to all apartments for purpose of running business and providing services—Occupants of each apartment having exclusive occupation of apartment 'as a residence' for purposes of Rent Act 1968—Whether tenant occupying whole of premises including apartments for purposes of business—Landlord and Tenant Act 1954, s 23(1). **Lee-Verhulst (Investments) Ltd v Harwood Trust** [1972] 3 619, CA.

LANDLORD AND TENANT (cont)

Business premises (cont)—

Occupied for business purposes (cont)—

Tenant carrying on business of sub-letting parts of premises as flats—Occupation by landlord of ancillary parts of premises—Application of Landlord and Tenant Act 1954, Part II—Landlord and Tenant Act 1954, ss 23(1)(2)(3), 32(1). **Bagettes Ltd v GP Estates Co Ltd** [1956] 1 729, CA.

Opposition to grant of new tenancy. *See* Opposition to grant of new tenancy of business premises, *post*.

Part only of holding—

Jurisdiction—Whether jurisdiction to order tenancy of part of premises used by tenant for business purposes—Landlord and Tenant Act 1954, ss 23(3), 29(1), 32(1). **Fernandez v Wadding** [1968] 1 994, CA.

Premises—

Tenancy of gallops for training racehorses—Whether gallops were 'premises' within Landlord and Tenant Act 1954, s 23(1). **Bracey v Read** [1962] 3 472, ChD.

Recovery of possession. *See* Recovery of possession—Business premises, *post*. 195730563 Rent. *See* Rent—Business premises, *post*.

Right to new tenancy conditional on tenant's continuing throughout proceedings to be tenant under business tenancy—

Continuity of business user—Tenant ceasing to trade from premises and premises left empty for period during pendency of application for new tenancy—Tenant's intention to discontinue lines of existing business and, if granted new tenancy, to start another but similar line of business—Whether tenant ceased to occupy premises for the purposes of a business—Landlord and Tenant Act 1954, s 23(1). **I & H Caplan Ltd v Caplan (No 2)** [1963] 2 930, ChD.

Tenancy—

Exclusion of statutory protection—Effect of provision purporting to exclude statutory protection of tenancy. **Manfield & Sons Ltd v Botchin** [1970] 3 143, QBD.

Renewal by agreement between landlord and tenant—Landlord—Reversionary lease granted by head lessor to person then tenant of intermediate landlord—Whether intermediate landlord the 'landlord'—Whether interest of intermediate landlord a tenancy which would not expire within fourteen months of the grant of the 'reversionary tenancy'—Landlord and Tenant Act 1954, ss 28, 44(1)(b). **Bowes-Lyon v Green** [1961] 3 843, HL.

Tenancy at will—Tenancy created by express agreement—Whether protected tenancy. **Hagge (London) Ltd v A B Erikson and Larson (a firm)** [1975] 3 234, CA.

Tenancy at will—Whether protected tenancy—Landlord and Tenant Act 1954, ss 25(3)(4), 43(3), 69(1). **Wheeler v Mercer** [1956] 3 631, HL.

Tenant's claim for new lease in lieu of compensation—

Claim by tenant seeking new lease that old lease still subsisting—Right of tenant to claim old lease still subsisting—Landlord and Tenant Act 1927, ss 4(1)(i), 5(1). **W Davis (Spitalfields) Ltd v Huntley** [1947] 1 246, KBD.

Claim for compensation bad—Effect on claim for new lease—Landlord and Tenant Act 1927, s 5(1). **British and Colonial Furniture Co Ltd v William McIlroy Ltd** [1952] 1 12, KBD.

Factors to be considered—Covenant by tenant not to apply for new lease—Landlord and Tenant Act 1927, ss 5(2), 9. **Etam Ltd v Forte** [1954] 3 311, CA.

Grant of new lease subject to condition—Provision for determination by landlord and payment of compensation to tenant—Tribunal's power to fix compensation on determination—Landlord and Tenant Act 1927n s 5(2). **Lambert v Ve-Ri-Best Manufacturing Co Ltd** [1954] 1 961, CA.

Interim continuation of tenancy pending determination by court—Undertaking by landlord not to dispossess tenant during proceedings for new lease—Right of tenant to interim order—Landlord and Tenant Act 1927, s 5(1), (13). **British and Colonial Furniture Co Ltd v William McIlroy Ltd** [1951] 1 404, CA.

Opposition by landlord—Premises required for occupation by landlord—'Landlord'—Relevant date for determining reasonableness—Landlord and Tenant Act 1927, s 5(3). **G C & E Nuthall (1917) Ltd v Entertainments & General Investment Corp Ltd** [1947] 2 384, KBD.

Opposition by landlord—Premises required for occupation by landlord—Joint landlords—Premises required for occupation by two of three landlords—Two landlords sons of third landlord—Reasonableness—Landlord and Tenant Act 1927, s 5(2), (3)(b)(i). **Wetherall & Co Ltd v Stone** [1950] 2 1209, CA.

Reference to referee—Report by referee—Private conversation between county court judge and referee—Validity of judge's subsequent decision—Landlord and Tenant Act 1927, ss 4(1), 5(1), 20(2)—CCR Ord 19, r 2(f),(g),(h), Ord 40, r 5. **Schooley v Nye** [1949] 2 950, CA.

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Tenant precluded from inquiring into lessor's title—Notice of restrictive covenants—Onus of proving tenant had notice of covenant—Law of Property Act 1925, s 44(2), (5). **Shears v Wells** [1936] 1 832, ChD.

Parting with possession—

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Statutory provision—Provision in lease for circumstances in which refusal not to be deemed unreasonable—Validity—Landlord and Tenant Act 1927, s 19(1). *Re Smith's Lease* [1951] 1 346, ChD.

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Covenant by lessee to spend £500 per annum on repairs or pay the difference between £500 and the amount actually spent—Whether sums payable under covenant payable as 'damages for breach of covenant to repair'—Landlord and Tenant Act 1927, s 18(1). **Moss' Empires Ltd v Olympia (Liverpool) Ltd** [1939] 3 460, HL.

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Intention to demolish—Material date for proof of intention to demolish—Landlord and Tenant Act 1927, s 18(1). **Keats v Graham** [1959] 3 919, CA.

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Recovery of rent paid—Implied warranty—Unilateral mistake—Money had and received. **Edler v Auerbach** [1949] 2 692, KBD.

Legal or physical fitness—

Warranty—No implied warranty—Sub-lessee requiring premises, to sub-lessor's knowledge, for use for particular business—Grant of sub-lease with restriction of certain uses, but an exception for the particular use—Particular use prohibited by covenant in head lease, and stopped by freeholder. **Hill v Harris** [1965] 2 358, CA.

Fixtures—

Business premises. *See* Business premises—Fixtures, *ante*.Trade fixtures. *See* Lease—Fixtures—Trade fixtures, *post*.

LANDLORD AND TENANT (cont)**Forfeiture of lease—****Action for possession by lessor—**

Injunctions to restrain breaches of covenant also claimed, without prejudice to claim for possession—Motion for injunctions—Whether writ on unequivocal demand for possession constituting election to determine term—Whether plaintiff entitled to ask for relief by way of injunction on footing that covenant in lease still subsisted. **Calabar Properties Ltd v Seaguli Autos Ltd** [1968] 1 1, ChD.

Application for relief—

Lessee making informal application during course of hearing—No claim for relief included in pleadings—No application for leave to amend pleadings—Jurisdiction to grant relief—National Land Code (Malaysia), s 237. **Lam Kee Ying Sdn Bhd v Lam Shes Tong** [1974] 3 137, PC.

Arrears of rent—

County court action—Form of order—Relief from forfeiture—Order in wrong form—No indication forfeiture avoidable if rent paid—Non-compliance with statute—Tenant absent from court when order for possession made—Warrant for possession—Arrears paid before date for execution—Application to set aside—Not a case for amending order—Order discharged—Possession restored to tenant as lessee—County Courts Act 1959, s 191(1)—County Court Rules 1936 (S R & O 1936 No 626), App A, Forms 134, 136. **Spurgeons Homes v Gentles** [1971] 3 902, CA.

County court action—Form of order. *See Rent restriction* (Possession)—Non-payment of rent—Arrears of rent—Landlord's right to forfeiture for non-payment of rent—Reasonableness of order for possession—Arrears due to illness—Form of order.

County court action—Relief from forfeiture—Cesser of action following payment into court by lessee of arrears and costs—Arrears and costs paid in over five days before return day—Payment not made by or on behalf of lessee—No cesser of action—County Courts Act 1959, s 191(1)(e). **Matthews v Dobbins** [1963] 1 417, CA.

Relief. *See Relief against forfeiture—Arrears of rent, post.*

Breach of repairing covenant—

Landlord unable to ascertain name of lessee—Notice requiring premises to be repaired served on 'the lessee' of premises—Leave given to proceed for forfeiture and damages—Whether lessee entitled to withhold name—Leasehold Property (Repairs) Act 1938, s 1(3). **Pascall v Galinski** [1969] 3 1090n CA.

Notice—Statement of lessee's right to serve counter-notice—Statement in characters not less conspicuous than those used in any other part of notice—Statement to specify manner in which counter-notice may be served—Name and address for service of lessor to be specified—Notice served on tenant—Standard form used—Blank spaces for insertion of details—Details filled in in bigger blacker type—Statement of tenant's rights in ordinary type—Statement only specifying some of the ways in which counter-notice could be served—Statement only giving name and address for service of landlords' solicitor—Whether statutory requirements complied with—Law of Property Act 1925, s 146—Leasehold Property (Repairs) Act 1938, s 1(4). **Middlegate Properties Ltd v Messimeris** [1973] 1 645, CA.

Denial of landlord's title—

Application for relief against forfeiture—Law of Property Act 1925, s 146(2). **Warner v Sampson (No 2)** [1958] 1 314, QBD.

Denial by tenant—Whether sufficient to cause forfeiture. **Wisbech St Mary Parish Council v Lilley** [1956] 1 301, CA.

Denial in pleadings—Action for possession for breach of covenants—Defence containing general traverse—Claim for forfeiture in reply—Whether sufficient denial of landlord's title—Administration of Estates Act 1925, ss 2(2), 55(1)(iii). **Warner v Sampson** [1959] 1 120, CA.

Forfeiture—

Action for possession by lessor—Issue of writ not sufficient to bring about forfeiture—Service of writ necessary to effect forfeiture and terminate lease. **Canas Property Co Ltd v K L Television Services Ltd** [1970] 2 795, CA.

Forfeiture clause—

Provision enabling landlord to determine lease for breach of covenant to pay rent on giving notice in writing—Tenancy agreement containing clause entitling either party to determine lease on giving twelve months' notice—Landlord entitled to give three months' notice for breach of covenant to pay rent—Whether provision enabling landlord to give three months' notice to determine tenancy operating as a forfeiture clause—Whether tenant entitled to relief against forfeiture. **Richard Clarke & Co Ltd v Widnall** [1976] 3 301, CA.

Lessee enemy alien abroad—

No person authorised to pay rent or perform covenants—Re-entry by grant of weekly tenancy to another tenant. **Edward H Lewis & Son Ltd v Morelli** [1948] 1 433, KBD.

Notice of breach—

Failure to give notice—Deed of surrender—Surrender executed and delivered in escrow to third party conditional on compliance with positive covenant—Surrender delivered to landlord by third party on failure to comply with covenant—Whether surrender void as device to circumvent statutory provisions requiring notice of breach—Law of Property Act, 1925, s 146. **Plymouth Corp v Harvey** [1971] 1 623, ChD.

Persons to be served with notice—Lease vested in co-owners—Covenant to repair—Notice to repair served on one lessee only—Notice requiring work not within covenant—Vesting of lease in Public Trustee—Law of Property Act 1925, s 146, Sch I, Part IV, para 1(4). **Blewett v Blewett** [1936] 2 188, CA.

Requirement to remedy breach—Breach incapable of remedy—Covenant not to sublet without lessor's consent—Lessee subletting without necessary consent—Whether breach capable of remedy—Whether notice required to call on lessee to remedy breach—Law of Property Act 1925, s 146(1). **Scala House and District Property Co Ltd v Forbes** [1973] 3 308, CA.

LANDLORD AND TENANT (cont)

Forfeiture of lease (cont)—

Notice of breach (cont)—

Requirement to remedy breach—Requirement where breach capable of remedy—Covenant against user of premises for other than residential purposes—User for purposes of prostitution—User by sub-tenant without knowledge of tenants—Notice not requiring breach to be remedied—Whether notice invalid—Validity of notice requiring remedy of breach if capable of being remedied—Law of Property Act 1925, s 146(1). *Glass v Kencaakes Ltd* [1964] 3 807, QBD.

Requirement to remedy breach—Requirement where breach capable of remedy—Covenant not to contravene any of the laws of the land—User of premises as brothel—Notice not containing requirement that breach should be remedied—Validity—Whether breach capable of remedy—Whether notice required to call on lessee to remedy breach—Law of Property Act 1925, s 146(1), (2). *Egerton v Esplanade Hotels London Ltd* [1947] 2 88, KBD.

Requirement to remedy breach—Requirement where breach capable of remedy—Covenant to conduct club in proper and orderly manner—Permitting premises to be used for purpose of gaming—Notice not containing requirement that breach should be remedied—Validity—Law of Property Act 1925, s 146(1)(2). *Hoffman v Fineberg* [1948] 1 592, ChD.

Receiving order made against tenant—

Subsequent action for possession by landlord. *See* **Bankruptcy** (Legal proceedings against debtor following receiving order—Remedy of creditor against property or person in respect of debt—Forfeiture of lease).

Relief against forfeiture. *See* Relief against forfeiture, *post*.

Waiver of forfeiture—

Acceptance of rent—Covenants against underletting without consent and against user otherwise than as private dwelling-house—Unlawful underletting—Acceptance by landlord of rent—Waiver of forfeiture for breach of covenant as to user. *Downie v Turner* [1951] 1 416, CA.

Acceptance of rent—Whether question of fact or of law. *Windmill Investments (London) Ltd v Milano Restaurant Ltd* [1962] 2 680, QBD.

Demand for rent—Demand by landlord for future rent in advance—Landlord having sufficient knowledge of facts constituting breach to put him to election—Whether demand for future rent capable of amounting to waiver. *David Blackstone Ltd v Burnetts (West End) Ltd* [1973] 3 782, QBD.

Demand for rent—Rent payable in advance—Demand expressed to be without prejudice—Whether an unqualified demand effecting a waiver—Whether a waiver in respect of the future period to which the rent related. *Segal Securities Ltd v Thoseby* [1963] 1 500, QBD.

Knowledge of breach of covenant—Knowledge sufficient to put landlord to election—Knowledge of landlord's solicitor of facts constituting breach of covenant—Solicitor uncertain whether facts constituting a breach of covenant in law. *David Blackstone Ltd v Burnetts (West End) Ltd* [1973] 3 782, QBD.

Knowledge of breach of covenant—Landlords' managing agents having knowledge of tenant's breach—Agents instructing their staff not to demand or accept rent from tenant—Clerk, ignorant of instruction, demanding rent from tenant—Rent paid by tenant well knowing landlords still intended to forfeit lease—Whether landlords' right to forfeiture waived—Law of Property Act 1925, s 146. *Central Estates (Belgravia) Ltd v Woolgar (No 2)* [1972] 3 610, CA.

Promise by landlord before execution of lease that tenant could continue to live on premises—Enforceability of landlord's promise. *City & Westminster Properties (1934) Ltd v Mudd* [1958] 2 733, ChD.

Form of application for new tenancy—

Business premises. *See* Business premises—Application for new tenancy—Form, *ante*.

Frustration—

Building lease. *See* Building lease—Frustration of contract, *ante*.

Determination of lease—

Impossibility of performance.

Furnished tenancy—

Reference of contract to rent tribunal. *See* **Rent tribunal** (Reference of contract).

Rent restriction. *See* **Rent restriction** (Furnished letting).

Goodwill—

Business premises—

Compensation for goodwill. *See* Compensation for goodwill in respect of business premises, *ante*.

Harassment—

Civil liability. *See* **Statutory duty** (Breach—Civil liability—Landlord and tenant—Harassment).

Holding over—

Wilful. *See* Tenancy—Wilfully holding over after determination of term—Wilfully, *post*.

Illegality—

Agreement for lease—

Use of premises. *See* Agreement for lease—Illegality—Use of premises, *ante*.

Illegal user of premises. *See* Lease—Illegal purpose—Illegal user of premises, *post*.

Immoral user of premises—

Forfeiture of lease—

Discretion to grant relief. *See* Relief against forfeiture—Immoral user of premises—Court's discretion to grant relief, *post*.

Implied covenant—

Generally. *See* Covenant—Implied covenant, *ante*.

Repair. *See* Implied covenant to repair, *post*.

LANDLORD AND TENANT (cont)

Implied covenant to repair—

Covenant by landlord—

Common parts of block of flats—Block in multiple occupation—Landlord retaining possession of common parts—No express covenant to repair in tenancy agreement—Tenancy agreement containing implied easements for the purpose of access to dwellings—Circumstances requiring implication of covenant on part of landlord with regard to easements—Nature of obligation—Obligation to take reasonable care to keep stairs, lifts etc in state of reasonable repair and efficiency. *Liverpool City Council v Irwin* [1976] 2 39, HL.

Flat let on weekly tenancy by local authority—No obligation on landlords to repair expressed in tenancy—Landlord having right of entry to repair—Restriction on tenant's doing repairs—Duty on tenant to deliver up in tenantable repair—Whether obligation on landlord to repair implied. *Sleafer v Lambeth Metropolitan Borough Council* [1959] 3 378, CA.

Short lease of dwelling-house—

Defect requiring repair—Knowledge of defect—Relevance—Latent defect in ceiling—Ceiling falling in and injuring tenant—Tenant having no knowledge of defect before fall—Tenant not in a position to inform landlord of defect—Landlord having no knowledge of defect—Whether landlord liable for breach of implied covenant to keep structure of dwelling-house in repair—Housing Act 1961, s 32(1). *O'Brien v Robinson* [1973] 1 583, HL.

Duty of landlord to keep in repair the structure and exterior of the dwelling-house—Exterior—Meaning—Yard behind house—Paving slabs in yard—Yard not a means of access to the house—Whether slabs part of 'exterior' of house—Housing Act 1961, s 32(1)(a). *Hopwood v Cannock Chase District Council* [1975] 1 796, CA.

Short lease—Lease for term of less than seven years—Lease determinable at option of lessor before expiration of seven years from commencement of term—Lease for term of 90 years—Lease conferring option on either party to determine lease on death of landlord—Whether lease 'determinable at the option of the lessor before the expiration of seven years from the commencement of the term'—Housing Act 1961, s 33(2). *Parker v O'Connor* [1974] 3 257, CA.

Steps and flagstones forming access to house—Whether implied covenant included steps and flagstones—Housing Act 1961, s 32(1)(a). *Brown v Liverpool Corp'n* [1969] 3 1345, CA.

Weekly tenancy—

Extent of obligation of weekly tenant to repair. *Warren v Keen* [1953] 2 1118, CA.

Implied grant of lease—

Death of statutory tenant—

Death of second statutory tenant—Permission to member of family to remain in occupation—Payment of rent—Occupation continuing for six months. *Marcroft Wagons Ltd v Smith* [1951] 2 271, CA.

Son and daughter residing with statutory tenant at his death and continuing in occupation thereafter—Acceptance of rent from son, etc—Correct inference—Son succeeding as statutory tenant under Increase of Rent and Mortgage Interest (Restrictions) Act 1920, s 12(1)(g). *Dealex Properties Ltd v Brooks* [1965] 1 1080, CA.

General words—

Inclusion of rights appertaining to premises—Flats supplied with hot water and central heating by landlords—Whether right conferred on tenant by general words—Law of Property Act 1925, s 62. *Regis Property Co Ltd v Redman* [1956] 2 335, CA.

Tenancy agreement—Right enjoyed with land at time of agreement—Coal shed—Shed being used by tenant, with landlord's permission, at date of agreement—Law of Property Act 1925, s 62(1). *Wright v Macadam* [1949] 2 565, CA.

Implied grant of tenancy agreement. *See* Tenancy agreement—Implied grant, *post*.

Implied term—

Lease—

Contribution by tenant to landlord's cost of maintaining building. *See* Contribution by tenant to landlord's cost of maintaining building—Implied term, *ante*.

Improvements—

Business premises—

Compensation—Limitation on tenant's right to compensation—Contractual obligation to make improvement—Proposed installation of new lavatories—Subsequent contract by tenants with underlessee to make the improvement—Whether tenant entitled to claim compensation—Landlord and Tenant Act 1927, s 2(1)(b). *Owen Owen Estate Ltd v Livett* [1955] 2 513, ChD.

Meaning of improvement—Lessee proposing to demolish all buildings demised and rebuild them—Objection by landlord—Application in Chancery Division for declaration proposed works improvements—Jurisdiction of Chancery Division—Landlord and Tenant Act 1927, ss 1, 2, 3, 16, 17, 21. *National Electric Theatres Ltd v Hudgell* [1939] 1 567, ChD.

Housing legislation, under—

Notice. *See* Housing (Improvement notice).

Licence or consent of landlord—

Alteration to premises—Installation of individual hot water system—Whether an 'improvement'—Whether installation trespass to landlord's property—Landlord and Tenant Act 1927, s 19(2). *Tideway Investment and Property Holdings Ltd v Wellwood* [1952] 1 1142, ChD.

Licence or consent not to be unreasonably withheld—Unreasonable withholding—Demand of sum of money considered excessive by lessee—Counter-offer of lesser sum as compensation—Power of court to order reference to official or special referee—Meaning of 'improvements'—Improvements from tenants' point of view—Demised premises as part of composite premises—Landlord and Tenant Act 1927, s 19(2), (3). *F W Woolworth & Co Ltd v Lambert* [1936] 2 1523, CA.

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Improvements (cont)—

Licence or consent of landlord (cont)—

Licence or consent not to be unreasonably withheld—Unreasonable withholding—
Compensation substantial but uncertain in amount—Right of landlord to consider self-
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Lambert v F W Woolworth & Co Ltd [No 2] [1938] 2 664, CA.

Income tax—

Excess rent. *See* **Income tax** (Profits—Excess rent).

Land—

Person chargeable—Landlord. *See* **Income tax** (Land—Person chargeable—Landlord).

Indemnity clause—

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Fitness of premises. *See* **Fitness of premises**—Innocent misrepresentation inducing contract, *ante*.

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Joint tenants—

Death of one of two joint tenants—

Liability of executors for rent. *See* **Rent**—Joint tenancy—Death of one of two joint tenants—
Tenancy of committee rooms—Liability of executors, *post*.

Business premises—

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Judgment for possession—

Enforcement. *See* **Recovery of possession**—Judgment for possession—Enforcement, *post*.

Landlord's duty of care to visitors. *See* **Occupier's liability** (Landlord—Duty of care to visitors).

Lease—

Agreement for lease—

Specific performance. *See* **Specific performance** (Lease).

Agreement to purchase lease—

Breach of agreement—Assignor to use best endeavours to obtain landlord's consent—
Alternatively option to take a declaration of trust or direct method of dealing with property—
Landlord's consent refused—Refusal to exercise option—Breach of contract—Return of
deposit. **Pincott v Moorstons Ltd [1937] 1 513, CA.**

Delay—Damages for delay. **Phillips v Lamdin [1949] 1 770, KBD.**

Agricultural holding. *See* **Agricultural holding**.

Assignment. *See* **Assignment of lease**, *ante*.

Avoidance—

Mistake as to identity of lessee—Fraudulent misrepresentation by lessee—Lessor's right to
avoid lease. **Sowler v Potter [1939] 4 478, KBD.**

Building lease. *See* **Building lease**, *ante*.

Condition—

Conditions and covenants distinguished—Stipulations possibly having the characters of both.
Bashir v Comr of Lands [1960] 1 117, PC.

Construction—

What surrounding circumstances should be taken into consideration. **City & Westminster
Properties (1934) Ltd v Mudd [1958] 2 733, ChD.**

Covenant—

Certificate of lessor's surveyor as to lessor's expenses to be final—Whether covenant contrary
to public policy. *See* **Contract** (Illegality—Public policy—Jurisdiction of court—Exclusion—
Lease—Lessee's covenant to contribute towards lessor's expenses—Certificate of lessor's
surveyor as to lessor's expenses to be final).

Covenant benefiting demised land—Registration. *See* **Land charge** (Registration—Restrictive
covenant—Covenant for benefit of demised land).

Generally. *See* **Covenant**, *ante*.

Unusual covenants in underlease—Duty of solicitor to advise and/or warn client on effect.
See **Solicitor** (Client—Negotiation of grant of underlease to architects—Unusual covenants
in underlease restricting user—Omission of solicitor to advise and/or warn client of
effect).

Creation of tenant's interest—

Date of creation—Whether date of execution of lease or of subsequent commencement of
term. **Northcote Laundry Ltd v Frederick Donnelly Ltd [1968] 2 50, CA.**

Determination. *See* **Determination of lease**, *ante*.

Duration—

Certainty—Possession to be given up 'by' specified date. **Joseph v Joseph [1966] 3 486,
CA.**

Exclusion clause—

Express language required—Clauses exempting lessor from liability for damage to property
leased or goods therein, and providing indemnity against claims by third parties—Need of
express language to exempt from liability for negligence—Existence of other ground of
damage. **Canada Steamship Lines Ltd v Regem [1952] 1 305, PC.**

LANDLORD AND TENANT (cont)

Lease (cont)—

Execution—

Counterpart lease and lease both executed but not exchanged—Lessor a limited company—Whether company bound by sealed lease. **Beesly v Hallwood Estates Ltd** [1961] 1 90, CA.

Counterpart lease and lease both executed but not exchanged—Lessor a limited company—Whether tenant—Whether executed lease in escrow—Absence of evidence of intention of those executing lease on behalf of company—Law of Property Act 1925, s 74(1). **D'Silva v Lister House Development Ltd** [1970] 1 858, ChD.

Extent of demise—

Lease of one-storey shop—Shop flanked on two sides by higher buildings—Whether air space above shop demised to tenant. **Kelsen v Imperial Tobacco Co (of Great Britain and Ireland) Ltd** [1957] 2 343, QBD.

Lease of part of building—External walls—External fixtures—Extent to which included in demise. **Sturge v Hackett** [1962] 3 166, CA.

Owner of houses and gardens converting houses into shops—Gardens asphalted—Owner leasing to tenant 'all that messuage and shop with appurtenances thereto'—'Appurtenances'—Whether including forecourt—Law of Property Act 1925, s 62. **Owens v Thomas Scott & Sons (Bakers) Ltd and Wastall** [1939] 3 663, KBD.

Fishing rights—

Grant for term of years—Retention by owner of 'one rod for her own use'—Effect of retention. **Re Vicker's Lease** [1947] 1 707, CA.

Fixtures—

Removal after contract for assignment of lease—Order to replace. **Phillips v Lamdin** [1949] 1 770, KBD.

Trade fixtures—Mode of annexation—Corrugated iron shed erected upon concrete floor—Superstructure removable without material injury—Whether concrete foundation and superstructure single unit. **Webb v Frank Bevis Ltd** [1940] 1 247, CA.

Trade fixtures—Mode of annexation—Petrol pumps and tanks—Whether pumps and tanks single unit—Removal within reasonable time—On failure to remove, property in fixtures to vest in landlord. **Smith v City Petroleum Co Ltd** [1940] 1 260, KBD.

Use of landlord's fixtures and fittings granted by tenancy agreement—Refrigerator operated by central plant in landlord's control—Plant in disrepair—Whether landlord liable to repair plant and supply refrigeration. **Penn v Gatenex Co Ltd** [1958] 1 712, CA.

What constitutes fixtures—Electric plant—Storage battery. **Jordan v May** [1947] 1 231, CA.

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Illegal premium. *See* Rent restriction (Premium).

Illegal purpose—

Illegal user of premises—Permission to use premises for professional purposes—Regulation forbidding such use without consent of local housing authority—Enforceability of lease—Illegal object of lessor not pleaded, but disclosed, and dealt with, in evidence—Defence (General) Regulations 1939, reg 68CA(1). **Edler v Auerbach** [1949] 2 692, KBD.

Implied covenant—

Fitness of property for human habitation—Scope of covenant. *See* Housing (Fitness of property for human habitation—Scope of implied condition of lease).

Generally. *See* Covenant—Implied covenant, *ante*.

Repair. *See* Implied covenant to repair, *ante*.

Implied grant. *See* Implied grant of lease, *ante*.

Implied term—

Contribution by tenant to landlord's costs of maintaining building. *See* Contribution by tenant to landlord's costs of maintaining building—Implied term, *ante*.

Indemnity clause—

Scope—Lease of premises by railway company to wagon repairing company—Indemnity clause against damages, etc, for injury to repairing company's employees—Employee injured away from demised premises—Whether indemnity restricted to injury connected with demised premises—Construction. **Henson v London & North Eastern Ry Co and Coote & Warren Ltd (third party)** [1946] 1 653, CA.

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Forfeiture—Relief of mortgagees. *See* Relief against forfeiture—Underlessee—Lease mortgaged—Relief of mortgagees, *post*.

Mortgagor's power of leasing. *See* Mortgage (Power of leasing).

Option to determine—

Break clause on premises becoming unfit—Service flat—No damage to flat—Damage to building rendering service impossible—Whether tenant entitled to exercise option—Landlord and Tenant (War Damage) Act 1939, s 1. **Johnstone v Swan Estates Ltd** [1941] 3 446, ChD.

Notice must follow terms of clause—Notice given for 21st December instead of 25th December—Invalid. **Hankey v Clavering** [1942] 2 311, CA.

Option to renew—

Generally. *See* Renewal of lease—Option, *post*.

Fixing of rent—Option for renewal at a rent to be fixed having regard to the market value of the premises at the time of exercising option—No machinery for fixing rent—Whether void. **Brown v Gould** [1971] 2 1505, ChD.

Observance of covenants—Condition of exercise of option performance of covenants—Delay in performance—Obligation satisfied before date for renewal or lease although not at date specified in agreement—Right to renewal. **Robinson v Thames Mead Park Estates Ltd** [1947] 1 366, ChD.

LANDLORD AND TENANT (cont)

Lease (cont)—

Option to renew (cont)—

Observance of covenants—Condition of exercise of option that 'all covenants ... have been observed'—Trivial breaches of covenant—Covenants by tenant to keep interior in repair and paint every three years and in last year of term—Tenant kept interior in fair decorative repair, but failed to paint ceiling at all, or to paint at all in last year of term—Notice given before last year of term to exercise option—Landlord frequently visited premises but said nothing—Whether breaches waived or landlord estopped from relying on them—Whether option exercisable. **West Country Cleaners (Falmouth) Ltd v Saly** [1966] 3 210, CA.

Uncertainty—Option for renewal at such rental as may be agreed—Whether void. **King's Motors (Oxford) Ltd v Lax** [1969] 3 665, Ch Ct, County Palatine of Lancaster.

Perpetual right of renewal. *See* Renewal of lease—Perpetual right of renewal, *post*.

Premium—

Protected tenancy. *See* Rent restriction (Premium).

Rectification—

Absence of common intention to include words in lease. **City & Westminster Properties (1934) Ltd v Mudd** [1958] 2 733, ChD.

Renewal. *See* Renewal of lease, *post*.

Repudiation—

Acceptance of repudiation—Effect—Continuance of lease—Solus agreement—Petrol filling station—Lease of petrol station by oil company—Tenant agreeing to take all supplies of fuel from landlord—Payment cash on delivery—Landlord repudiating agreement by requiring payment by banker's draft prior to despatch of order—Tenant accepting repudiation and obtaining supplies elsewhere—Landlord subsequently offering to revert to original terms of cash on delivery—Tenant continuing to obtain supplies elsewhere—Claim by landlord for injunction—Whether lease continuing to subsist after acceptance of repudiation—Whether landlord entitled to enforce agreement after offering to revert to original terms for payment. **Total Oil Great Britain Ltd v Thompson Garages (Biggin Hill) Ltd** [1971] 3 1226, CA.

Reservation—

Sporting rights—Right to take rabbits reserved to landlord—Right to tenant farmer to kill rabbits in interests of good farming—Right to agree to destruction of rabbits by agricultural executive committee—Right of landlord to set snares in tenant's fields—Profit à prendre—Oral grant—Part performance—Ground Game Act 1880, s 1(1)(b)—Law of Property Act 1925, s 40. **Mason v Clarke** [1955] 1 914, HL.

Resulting trust. *See* Trust and trustee (Constructive trust—Tenancy agreement).

Reversion—

Option granted to tenant to purchase freehold reversion—Purchase price—Valuation—Value of reversion or of freehold with vacant possession—Presumption that price to be determined at value of reversion—Rebuttal of presumption by inconsistent directions—Price to represent 'fair market price of the demised premises'—Fair market price having regard to values of comparable properties—Impossibility of valuing reversion by reference to comparable properties—Inference that price to be determined by reference to value of freehold with vacant possession. **Re Nagel's Lease** [1974] 3 34, ChD.

Statutory requirements—

Lease exceeding three years to be in writing—Agreement not under seal—Term of 14 years determinable by tenant at end of any year—Whether lease for term exceeding three years—Whether valid—Law of Property Act 1925, ss 52(1), 52(2)(d), 54(2). **Kushner v Law Society** [1952] 1 404, KBD.

Surrender—

Winding-up of lessee company—Informal surrender of lease by liquidator—Breach of covenant at time of surrender—Whether provable in liquidation. *See* Company (Winding-up—Proof and ranking of claims—Claim for breach of covenant—Covenant to yield up demised premises with full vacant possession—Informal surrender of lease by liquidator).

Underlease—

Term of underlease—Underlease for whole term of lease operating as assignment—Reversion sufficient to support underlease—Indefinite but defeasible term—Business premises—Term continuing after date of expiry by virtue of statute—Term liable to be determined by notice—Underlease for term expiring after date of expiry of lease—Whether sufficient reversion to support underlease. **William Skelton & Son v Harrison & Pinder Ltd** [1975] 1 182, QBD.

Variation—

Implied variation—Tenancy agreement under which tenant undertook responsibility for repairs—Repairs carried out by landlords for many years—Whether variation of agreement implied. **Board of Governors of the London Hospital v Jacobs** [1956] 2 603, CA.

War-time lease. *See* War-time lease, *post*.

Leasehold enfranchisement—

Claim by tenant—

Proceedings to enforce right of re-entry or forfeiture during currency of claim—Leave—Leave only where claim not made in good faith—Good faith—Tenant claiming extended lease—Serious breaches by tenant of repairing covenants—Proceedings by landlord to forfeit lease for breach of covenant—Notice by tenant of claim to extended lease—No prospect of tenant being able to fulfil repairing obligations under extended lease—Whether tenant's claim made in good faith—Leasehold Reform Act 1967, Sch 3, para 4(1). **Liverpool Corporation v Huan** [1971] 3 651, CA.

Proceedings to enforce right of re-entry or forfeiture during currency of claim—Leave—Leave only where claim not made in good faith—Good faith—Tenant claiming freehold—Claim following conviction of keeping a brothel on the premises—Tenant in breach of covenant for keeping brothel on premises—Lease liable to forfeiture for breach—Landlord wishing to bring proceedings to enforce right of forfeiture—Whether tenant's claim made in 'good faith'—Leasehold Reform Act 1967, Sch 3, para 4(1). **Central Estates (Belgravia) Ltd v Woolgar** [1971] 3 647, CA.

LANDLORD AND TENANT (cont)

Leasehold enfranchisement (cont)—

Enfranchisement where landlord cannot be found—

Determination of amount to be paid into court—Determination of 'amount remaining unpaid of any pecuniary rent payable'—Whether including arrears of rent which have become statute-barred—Limitation Act 1939, s 17—Leasehold Reform Act 1967, ss 9(5), 27(5). **Re Howell's Application** [1972] 3 662, ChD.

Identity of freeholder unknown—Tenant under long lease wishing to acquire freehold—Procedure—Leasehold Reform Act 1967, s 27. **Re Robertson's Application** [1969] 1 257, ChD.

Identity of freeholder unknown—Tenant under long lease wishing to acquire freehold—Rent reserved under lease of 1869 at 1d per annum in respect of greater area than that held by tenant—Determination of amount to be paid into court in respect of rent unpaid—Form of order—Leasehold Reform Act 1967, s 27(5). **Re Frost's Application** [1970] 2 538, ChD.

House—

Ground floor sublet—Whether building ground floor of which sublet as betting shop a house reasonably so called—Leasehold Reform Act 1967, s 2(1). **Lake v Bennett** [1970] 1 457, CA.

Lease of building comprising shop on ground floor with tenant's residential accommodation above—Shop joined up with the shop on the ground floor of next-door building by an opening in the wall—Tenant also lessee of next-door building—Whether building designed or adapted for living in and reasonably called a house—Leasehold Reform Act 1967, s 2(1). **Peck v Anicor Properties Ltd** [1971] 1 517, CA.

Material part of house lying above part of structure not comprised in house—House not structurally detached—Meaning of 'structurally detached'—Material part of house lying above part of structure not comprised in house—House having own entrance and separated from rest of structure by walls, ceiling and floor—Whether house 'structurally detached' from rest of structure—Leasehold Reform Act 1967, s 2(2). **Parsons v Viscount Gage (Trustees of Henry Smith's Charity)** [1974] 1 1162, HL.

Material part of house lying above or below structure not comprised in house—Occupation of 'house' by tenant as residence for period of five years—Semi-detached house—Opening made in wall between ground floor front room and front room of adjoining house—Door between front room and hall of adjoining house bricked up—Rooms restored to original condition year before tenant's application—Whether house occupied by tenant excluding front room of adjoining house—Whether tenant having occupied 'house' for requisite period—Leasehold Reform Act 1967, ss 1(1), 2(2). **Gaidowski v Gonville and Caius College, Cambridge** [1975] 2 952, CA.

Rateable value—House and premises—Leasehold including two houses—Only one occupied by tenant—Material part of house occupied by tenant overhanging part of structure not comprised in house—Appropriate rateable value—Rateable value of whole of premises in leasehold not appropriate rateable value—Appropriate rateable value that of whole building including part of structure not comprised in house occupied by tenant—Leasehold Reform Act 1967, s 1(1)(a). **Parsons v Trustees of Henry Smith's Charity** [1973] 3 23, CA.

Long tenancy—

Commencement—Tenancy granted for term exceeding 21 years—Grant of lease for 21 1/4 years expressed to take effect on date prior to date of execution and delivery of lease—Contract to grant lease of 10 1/4 years—Agreement two years later to extend term to 21 1/4 years from date of original contract—Date of subsequent execution of lease less than 21 years from date of expiry of term—Whether tenancy a long tenancy—Leasehold Reform Act 1967, s 3. **Roberts v Church Commissioners for England** [1971] 3 703, CA.

Tenancy deemed to be long tenancy—Tenant under long tenancy becoming tenant of same property under short tenancy—Tenant deemed to be holding property under long tenancy—Assignment of short tenancy to third party—Third party occupying property as his residence for five years—Whether third party deemed to be tenant under long tenancy—Whether third party entitled to acquire freehold—Leasehold Reform Act 1967, s 3(2). **Austin v Dick Richards Properties Ltd** [1975] 2 75, CA.

Premises—

House and other premises—House and other premises occupied therewith—House connected with adjoining house by doorway—Whether adjoining house other premises—Leasehold Reform Act 1967, s 3(6). **Wolf v Crutchley** [1971] 1 520, CA.

House and other premises—Premises let to the tenant with the house—Meaning of 'let with'—Necessity for reasonably close connection between transactions of letting house and other premises—House and other premises let by landlords to separate tenants—Tenant of house subsequently acquiring tenancy of other premises—Whether house let to tenant with other premises—Leasehold Reform Act 1967, s 2(3). **Gaidowski v Gonville and Caius College, Cambridge** [1975] 2 952, CA.

Retention of management powers—

Approval of scheme by court—Clause in lease imposing obligation on tenants to join association which would be responsible for upkeep of gardens—Scheme incorporating substance of clause—Scheme also providing that after enfranchisement powers and duties of landlords to be exercised by tenants' association—Provisions ancillary to power of management and control—Leasehold Reform Act 1967, s 19(1). **Re Abbots Park Estate** [1972] 2 177, ChD.

Approval of scheme by court—Obligations imposed on enfranchised tenants—Insurance—Obligation to insure property up to current cost of rebuilding—Whether power to enforce insurance included in powers of management—Leasehold Reform Act 1967, s 19(1). **Re Sherwood Close (Barnes) Management Co Ltd** [1971] 3 1293, ChD.

Approval of scheme by court—Tenants members and directors of landlord management company—Scheme including obligation designed to ensure that person acquiring enfranchised property became member of company—Provision not constituting 'powers of management'—Leasehold Reform Act 1967, s 19(1). **Re Sherwood Close (Barnes) Management Co Ltd** [1971] 3 1293, ChD.

LANDLORD AND TENANT (cont)

Leasehold enfranchisement (cont)—

Retention of management powers (cont)—

Scheme—Charge in favour of landlord—Building society—Society prohibited from advancing money on property subject to charge in favour of landlord—Clause postponing charge arising under scheme to legal charge or mortgage being a first charge on property—Leasehold Reform Act 1967, s 19(8)—Building Societies Act 1962, s 32. *Re Abbots Park Estate (No 2)* [1972] 3 148, ChD.

Tenancy at a low rent—

Tenancy granted between end of August 1939 and beginning of April 1963—Rent payable at commencement of tenancy exceeding two-thirds of letting value of property—Determination of 'letting value'—Rent obtainable in market—Tenancy subject to Rent Acts—Whether letting value restricted to rent permitted under Rent Acts—Leasehold Reform Act 1967, s 4(1) proviso. *Gidlow-Jackson v Middlegate Properties Ltd* [1974] 1 830, CA.

Tenancy granted between end of August 1939 and beginning of April 1963—Tenancy by way of building lease—Meaning of 'building lease'—Lease in consideration of agreement for substantial reconstruction of whole or part of house in question—Meaning of 'substantial reconstruction'—Distinction between 'reconstruction' and improvement—Leasehold Reform Act 1967, s 4(1)(d). *Gidlow-Jackson v Middlegate Properties Ltd* [1974] 1 830, CA.

Tenant occupying house as his residence—

Occupation in right of the tenancy—Mortgage term to be disregarded in determining in what right tenant occupies—Meaning of 'mortgage term'—Purchaser having acquired term from mortgagee exercising power of sale—Whether term created under mortgage which no longer applies to the term a 'mortgage term'—Leasehold Reform Act 1967, s 1(2)(b). *Re 'Fairview', Church Street, Bromyard* [1974] 1 1233, ChD.

Tenants entitled to enfranchisement or extension—

Leaseholder occupying basement and subletting other three floors—Whether entitled to acquire freehold—Leasehold Reform Act 1967, s 1(2)(a). *Harris v Swick Securities Ltd* [1969] 3 1131, CA.

Tenant's notice—

Prescribed notice—Notice of desire to have 'the freehold or an extended lease'—Failure to delete alternative—Validity of notice—Transitional provisions—Leasehold Reform Act 1967, ss 5(1), 34. *Re 33 Byrne Road, Balham* [1969] 2 311, CA.

Leave to institute proceedings for breach of covenant to repair. *See* Breach of covenant to repair—

Leave to institute proceedings, *ante*.

Licence to occupy land. *See* Licence (Licence to occupy land).

Licence to occupy premises—

Generally. *See* Licence (Licence to occupy premises).

Whether notice to quit needed. *See* Notice to quit—Tenancy at will—Licence to occupy premises—Whether any notice needed, *post*.

Licensed premises—

Compensation for goodwill. *See* Compensation for goodwill in respect of business premises—

Licensed premises, *ante*.

Limitation of action. *See* Limitation of action (Land—Adverse possession).

Local authority—

Opposition to grant of new tenancy of business premises—

Intention to demolish or reconstruct premises. *See* Opposition to grant of new tenancy of business premises—Intention of landlord to demolish or reconstruct premises comprised in holding—Local authority landlord, *post*.

Power to demise land. *See* Local authority (Land—Power to demise land).

Long leasehold—

Acquisition of freehold or extended lease. *See* Leasehold enfranchisement, *ante*.

Holding over after expiry of long tenancy—

Tenant or member of family residing in dwelling-house in right of tenancy—'In right of tenancy'—Action for damages for failure to repair at Goodier of tenancy—Allegation that tenancy of dwelling-house notionally continued by statute—Whether tenant's daughter residing in house 'in right of the tenancy'—Leasehold Property (Temporary Provisions) Act 1951, ss 2(1)(a), 5(1)(a). *Richmond v McGann* [1954] 3 97, QBD.

Long tenancy at low rent—

Protection. *See* Rent restriction (Long tenancy at low rent).

Magistrates—

Procedure before magistrates—

Recovery of possession. *See* Recovery of possession—Procedure before magistrates, *post*.

Mining lease—

Coal. *See* Coal mining (Mining Lease).

Mistake as to identity of lessee. *See* Mistake (Identity of party—Identity of lessee).

Mortgage of lease—

Forfeiture—

Relief of mortgagees. *See* Relief against forfeiture—Underlessee—Lease mortgaged—Relief of mortgagees, *post*.

Underletting without consent—

Forfeiture of lease—Relief of underlessees. *See* Relief against forfeiture—Underletting without consent—Mortgage, *post*.

Mortgaged property—

Covenant against assignment. *See* Mortgage (Sale—Leasehold property—Covenant in lease by lessee not to assign).

Receiver. *See* Mortgage (Receiver—Tenancy).

Negligence—

Landlord's liability. *See* Negligence (Landlord's liability).

LANDLORD AND TENANT (cont)

New tenancy—

Business premises—

Generally. *See* Business premises, *ante*.

Opposition to grant of new tenancy. *See* Opposition to grant of new tenancy of business premises, *post*.

Rent. *See* Rent—Business premises—New tenancy, *post*.

Shop—

Application to be made by occupier of shop—Occupier—Company carrying on business—Tenancy held by managing director—Application for renewal by managing director—Whether 'occupier'—Leasehold Property (Temporary Provisions) Act 1951, s 10(1). **Pegler v Craven** [1952] 1 685, CA.

Form of application—Omission of particulars in application—Validity of application—Leasehold Property (Temporary Provisions) Act 1951, s 10(1)—County Court Rules 1936, Ord 40A, r 7, Form 342A, para 2(h), (k) (added by County Court (Amendment) Rules 1951). **Osborne v Snook** [1953] 1 332, CA.

Opposition by landlord—Premises reasonably required for demolition or re-construction—Reasonableness—Leasehold Property (Temporary Provisions) Act 1951, s 12(3)(c). **J W Smart (Modern Shoe Repairs) Ltd v Hinckley and Leicestershire Building Society** [1952] 2 846, CA.

Premises occupied wholly or mainly for purposes of a retail trade or business—Builders and decorators—Whether their premises shop within statutory definition—Leasehold Property (Temporary Provisions) Act 1951, ss 10(1), 20(1). **M & F Frawley Ltd v Ve-Ri-Best Manufacturing Co Ltd** [1953] 1 50, CA.

Premises occupied wholly or mainly for purposes of a retail trade or business—Dairy business—Premises used for storage of milk bottles and refrigerator—No sales on premises—Whether premises a shop within statutory definition—Leasehold Property (Temporary Provisions) Act 1951, ss 10(2)(c), 20(1). **Deeble v Robinson** [1953] 2 1348, CA.

Premises occupied wholly or mainly for purposes of a retail trade or business—Nine-tenths of products sold wholesale—Whole premises used from time to time for production for retail sale—Whether premises a shop within statutory definition—Leasehold Property (Temporary Provisions) Act 1951, ss 10(1)(a), 20(1). **Berthelemy v Neale** [1952] 1 437, CA.

Reasonableness of grant—Matters for consideration of court—Rent—Quantum—Hardship—Financial disadvantage to landlord—Leasehold Property (Temporary Provisions) Act 1951, s 12(1), 3(e). **John Kay Ltd v Kay** [1952] 1 813, CA.

Tenancy at will—Tenancy coming 'to an end...by the expiration of a notice to quit'—Determination by service of writ in action for possession—Leasehold Property (Temporary Provisions) Act 1951, s 10(1). **Martinali v Ramuz** [1953] 2 892, CA.

Notice—

Failure to give notice of breach of covenant—

Forfeiture. *See* Forfeiture of lease—Notice of breach—Failure to give notice, *ante*.

Forfeiture—

Breach of repairing covenant. *See* Forfeiture of lease—Breach of repairing covenant—Notice, *ante*.

Notice of covenant. *See* Covenant—Notice of covenant, *ante*.

Notice to quit. *See* Notice to quit, *post*.

Opposition to grant of new tenancy—

Business premises. *See* Opposition to grant of new tenancy of business premises—Notice of opposition, *post*.

Renewal of lease. *See* Renewal of lease—Option—Notice of renewal, *post*.

Termination of tenancy—

Business premises. *See* Business premises—Notice by landlord to terminate tenancy, *ante*.

Notice to quit—

Agricultural holding. *See* Agricultural holding (Notice to quit).

Allotment. *See* Allotment (Allotment garden—Termination of tenancy).

Assignment of lease. *See* Assignment of lease—Notice to quit, *ante*.

Business premises—

Date for which statutory notice may be given—Monthly tenancy—Rent payable monthly in advance on first day of each calendar month—Landlord's notice to terminate on eleventh day of month—Effect—Landlord and Tenant Act 1954, s 25(1), (2). **Commercial Properties Ltd v Wood** [1967] 2 916, CA.

Generally. *See* Business premises—Notice by landlord to terminate tenancy, *ante*.

Lease for 14 years determinable by either party by notice of desire to determine at end of seventh year—Notice given by landlord in statutory form under the Landlord and Tenant Act 1954—Effect of notice—Landlord and Tenant Act 1954, ss 25(1), 69(1). **Scholl Mfg Co Ltd v Clifton (Slim-Line) Ltd** [1966] 3 16, CA.

Power of landlord to give notice—Landlord—Sub-tenancy of part of premises—Expiration of sub-tenancy and sub-tenant holding over as tenant from year to year—Notice by owner of freehold purporting to terminate sub-tenancy—Notice given before termination of tenant's lease—Date specified in notice as date of termination of sub-tenancy later than date on which tenancy would terminate—Whether notice effective—Landlord and Tenant Act 1954, ss 25(3), (4), 44(1). **Westbury Property & Investment Co Ltd v Carpenter** [1961] 1 481, ChD.

Power of landlord to give notice—Notice specifying date for termination of tenancy—Notice by head landlord—Notice to sub-tenant—Notice specifying date for termination before date on which mesne landlord's tenancy due to expire—Whether notice valid—Landlord and Tenant Act 1954, ss 25(3) (4), 44(1) (as amended by the Law of Property Act 1969, s 14(1)). **Lewis v MTC (Cars) Ltd** [1975] 1 874, CA.

LANDLORD AND TENANT (cont)

Notice to quit (cont)—

Business premises (cont)—

Power of landlord to give notice—Tenancy comprising two properties—Severance of reversion between properties—Apportionment of landlord's rights on severance—Power to give notice to terminate tenancy—Whether landlord of one property having power to give notice—Law of Property Act 1925, s 140—Landlord and Tenant Act 1954, s 25. **Dodson Bull Carpet Co Ltd v City of London Corporation** [1975] 2 497, ChD.

Service of notice—Registered letter addressed to tenants' former address forwarded to new address—Validity of service—Waiver of invalidity—Landlord and Tenant Act 1927, s 23 (1)—Landlord and Tenant Act 1954, s 66(4). **Stylo Shoes Ltd v Prices Tailors Ltd** [1959] 3 901, ChD.

Service of notice—Service at 'place of abode'—Delivery at business premises to which notice related—Validity—Counter-notice refusal—Landlord within period specified in notice, if measured from date of actual receipt by tenant—Whether any effect of reference to receipt of notice, as distinct from the giving of notice, in prescribed form, would be *ultra vires*—Landlord and Tenant Act 1927, s 23(1)—Landlord and Tenant Act 1954, ss 25(1), (5), 29(3), 66(1), s (2)—Landlord and Tenant (Notices) Regulations 1957 (SI 1957 No 1157), Form 7. **Price v London Investment Building Society** [1964] 2 318, CA.

Validity of notice. *See* Validity of notice to quit—Business premises, *post*.

Local authority housing. *See* **Housing** (Local authority houses—Notice to quit).

Service—

Agricultural holding. *See* **Agricultural holding** (Notice to quit—Service).

Intestacy—Service on President of Probate, Divorce and Admiralty Division. **Practice Direction** [1965] 3 230, Prob.

Mode of service—Mode of service different from that prescribed by statute—Notice received by tenant—Whether service effective—Landlord and Tenant Act 1927, s 23(1)—Landlord and Tenant Act 1954, s 66(4). **Stylo Shoes Ltd v Prices Tailors Ltd** [1959] 3 901, ChD.

Tenancy at will—

Licence to occupy premises—Whether any notice needed—Rent Act 1957, s 16. **Crane v Morris** [1965] 3 77, CA.

Sufficiency of notice—Letter from landlord's solicitors to tenant—Letter informing tenant that in absence of settlement solicitors have instructions to take proceedings against tenant for possession and damages. **Fox v Hunter-Paterson** [1948] 2 813, KBD.

Yearly tenancy—

Tenant holding over on expiration of lease—Term in lease enabling landlord to determine lease by giving six month's notice expiring on any day—Consistency with yearly tenancy. **Godfrey Thornfield Ltd v Bingham** [1946] 2 485, KBD.

Validity. *See* Validity of notice to quit, *post*.

Waiver—

Acceptance of rent in respect of period after termination of tenancy. **Clarke v Grant** [1949] 1 768, CA.

Service of second notice to quit—Effect. **Loewenthal v Vanhoute** [1947] 1 116, KBD.

Yearly tenancy—

When yearly tenancy is determined—Whether fixed term is substituted by notice to quit—Tenancy for purposes of Landlord and Tenant Act 1954, s 25. **Rhyl Urban District Council v Rhyl Amusements Ltd** [1959] 1 257, ChD.

Nuisance—

Liability of landlords for nuisance. *See* **Nuisance** (Landlord's liability).

Opposition to grant of new tenancy of business premises—

Breach of covenant—

Breaches of covenant to repair—Negotiations for rebuilding premises—Discretion of court over refusal of grant of tenancy—Landlord and Tenant Act 1954, ss 30(1)(a), 31. **Lyons v Central Commercial Properties Ltd** [1958] 2 767, CA.

Discovery—Discovery relating to tenants' ability to perform covenants—Landlord and Tenant Act 1954, s 30(1)(a), (c), (g). **Re St Martin's Theatre** [1959] 3 298, ChD.

Judge taking into account matters not specified in notice of opposition—Whether judge could take into account tenant's general conduct towards obligations under tenancy—Landlord and Tenant Act 1954, s 30(1)(a), (b), (c). **Eichner v Midland Bank Executor & Trustee Co Ltd** [1970] 2 597, CA.

Intention of landlord to demolish or reconstruct premises comprised in holding—

Counter-notice by immediate landlords of sub-tenant—Freeholders' intention to develop site including premises sub-leased—Surrender by immediate landlords of their tenancy to freeholders before hearing—Validity of counter-notice—Whether freeholders intending 'to demolish or reconstruct' premises—Landlord and Tenant Act 1954, ss 26(6), 30(1)(f). **Marks v British Waterways Board** [1963] 3 28, CA.

Date at which fixed and genuine intention to reconstruct must exist—Landlord and Tenant Act 1954, s 30(1)(f). **Betty's Cafés Ltd v Phillips Furnishing Stores Ltd** [1958] 3 607, HL.

Intention to grant building lease providing for demolition and reconstruction—Whether 'intention to demolish or reconstruct' premises—Landlord and Tenant Act 1954, s 30(1)(f). **Gilmour Caterers Ltd v Governors of St Bartholomew's Hospital** [1956] 1 314, CA.

Local authority landlord—No resolution passed expressing intention—Intention inferred from relevant evidence—Landlord and Tenant Act 1954, s 30(1)(f). **Poppett's (Caterers) Ltd v Maidenhead Borough Council** [1970] 3 289, CA.

Proof of intention—Intention of limited company—Proposed expansion of company associated with landlord—No consideration by associated company—Whether firm intention to carry out reconstruction—When intention must be held—Landlord and Tenant Act 1954, s 30(1)(f). **Fleet Electrics Ltd v Jacey Investments Ltd, Wills v Same** [1956] 3 99, CA.

LANDLORD AND TENANT (cont)

Opposition to grant of new tenancy of business premises (cont)—

Intention of landlord to demolish or reconstruct premises comprised in holding (cont)—

Proo+ of intention—Intention stated to reconstruct whole of premises—Evidence of intention to reconstruct substantial part of premises only—Landlords joint owners—Death of one co-owner—Evidence by surviving co-owner and executor of deceased co-owner before probate—Whether intention proved—Landlord and Tenant Act 1954, ss 25(1), 30(1)(f). **Biles v Caesar** [1957] 1 151, CA.

Proposed demolition and reconstruction of premises—Intention to use for landlord's own business—Whether genuine intention to demolish and reconstruct—Landlord and Tenant Act 1954, s30(1)(f)(g). **Fisher v Taylors Furnishing Stores Ltd** [1956] 2 78, CA.

Proposed demolition and reconstruction of substantial part of premises—Primary object use for landlord's own business—Whether necessary that primary object should be reconstruction—Landlord and Tenant Act 1954, s30(1)(f). **Atkinson v Bettison** [1955] 3 340, CA.

Proposed inclusion of site in development scheme—Whether firm intention to carry out scheme—Date at which fixed and genuine intention to reconstruct must exist—Landlord and Tenant Act 1954, s30(1)(f). **Rehorn v Barry Corp** [1956] 2 742, CA.

Intention of landlord to demolish or reconstruct premises comprised in holding—

Proposed work involving demolition of all buildings and replacement by others—Tenant willing to allow access for work to be carried out—Term of existing tenancy that landlord could do such work during tenancy and that tenant should allow access for it—Whether work could reasonably be done without obtaining possession—Landlord and Tenant Act 1954, s30(1)(f). **Little Park Service Station Ltd v Regent Oil Co Ltd** [1967] 2 257, CA.

Intention of landlord to demolish or reconstruct premises comprised in holding—

Reconstruct—Meaning—Landlord and Tenant Act 1954, s 30(1)(f) **Percy E Cadle & Co Ltd v Jacmarch Properties Ltd** [1957] 1 148, CA.

Reconstruct—Proposed work including alteration to shop-front involving considerable changes in physical character of holding—Totality of proposed work to be considered—Landlord and Tenant Act 1954, s 30(1)(f). **Bewlay (Tobacconists) Ltd v British Bata Shoe Co Ltd** [1958] 3 652, CA.

Reconstruct—Substantial interference with structure—Landlord and Tenant Act 1954, s 30(1)(f). **Joel v Swaddle** [1957] 3 325, CA.

Intention of landlord to occupy holding for purposes of business to be carried on by him—

Change of landlord between date of notice terminating tenancy and hearing of application for new tenancy—Effect—Whether landlord opposing application entitled to rely on notice served by previous landlord—Landlord and Tenant Act 1954, s 30(1)(g). **A D Wimbush & Son Ltd v Frannmills Properties Ltd** [1961] 2 197, ChD.

Discovery relating to intention to occupy—Intention to occupy for business purposes—Discovery relating to landlord's financial position—Whether order for discovery appropriate—Landlord and Tenant Act 1954, s 30(1)(g). **Re St Martin's Theatre** [1959] 3 298, ChD.

Discovery relating to intention to occupy—Undertaking to occupy premises—Landlord and Tenant Act 1954, s 30(1)(g). **John Miller (Shipping) Ltd v Port of London Authority** [1959] 2 713, ChD.

Holding—Demised property buildings—Landlord's intention at time of hearing to demolish buildings and to convert and occupy site—Whether intention to occupy the holding—Landlord and Tenant Act 1954, ss 23(3), 30(1)(g). **Nursey v P Currie (Dartford) Ltd** [1959] 1 497, CA.

Hospital governors—Board of governors of hospital as landlord—Premises to be conveyed by board to Minister of Health—Whether premises would be 'occupied' by the board for purposes of business carried on by it—Landlord and Tenant Act 1954, ss 23(2), 30(1)(g). **Hills (Patents) Ltd v Board of Governors of University College Hospital** [1955] 3 365, CA.

Landlord's interest, a leasehold interest, created within five years—Date of creation—Whether date of execution of lease or of commencement of term—Sub-tenant's interest arising only on commencement of term, sub-tenant being also freeholder—Whether leasehold landlord debarred from opposition under s 30(1)(g)—Landlord and Tenant Act 1954, s 30(2). **Northcote Laundry Ltd v Frederick Donnelly Ltd** [1968] 2 50, CA.

Landlord providing accommodation, equipment and staff for Universities Central Council on Admissions—Council separate entity—Landlord a limited company—Voluntary winding-up of landlord to transfer property to chartered company taking over landlord's activities—Transfer not complete at date of hearing of tenant's application for new tenancy—Whether provision of accommodation, etc, was an 'activity' and thus a business—Whether landlord could carry on business after resolution for winding-up—Whether sufficient intention on part of landlord for purposes of s 30(1)(g) of Act of 1954—Companies Act 1948, s 281—Landlord and Tenant Act 1954, ss 23(2), 30(1)(g). **Willis v Association of Universities of the British Commonwealth** [1964] 2 39, CA.

Only part of holding to be used immediately for purposes of business—Whether necessary to show intention to make actual physical use of whole of holding—Landlord and Tenant Act 1954, s 30(1)(g). **Method Developments Ltd v Jones** [1971] 1 1027, CA.

Partnership business—Landlord intending to carry on business in partnership with wife—Whether intention that business should be carried on by him—Landlord and Tenant Act 1954, s 30(1)(g). **Re Crowhurst Park** [1974] 1 991, ChD.

Proof of intention—Proof that reasonable prospect of being able to occupy premises by voluntary act—Objective test—Intention—Planning permission—Doubt whether planning permission necessary and, if so, whether obtainable—Landlord and Tenant Act 1954, s 30(1)(g). **Gregson v Cyril Lord Ltd** [1962] 3 907, CA.

LANDLORD AND TENANT (cont)**Opposition to grant of new tenancy of business premises (cont)—**

Intention of landlord to occupy holding for purposes of business to be carried on by him (cont)—

Resolution of board passed—Landlord negotiating for lease of other premises—Undertaking given to court to occupy—*Intention—Landlord and Tenant Act 1954, s 30(1)(g). Espresso Coffee Machine Co Ltd v Guardian Assurance Co [1959] 1 458, CA.*

Restriction on landlord's right to oppose application—Landlord's interest purchased less than five years before end of tenancy—Acquisition of interest by landlords under contract made in June, 1954—No pecuniary consideration from landlords—Tenancy expiring in March, 1959—Landlord's notice not having effect for certain purposes until three months after application disposed of—Whether landlords' interest purchased after beginning of the period of five years ending with the termination of the current tenancy—Landlord and Tenant Act 1954, ss 25(1), proviso, 30(2), 64. *Frederick Lawrence Ltd v Freeman Hardy & Willis Ltd [1959] 3 77, CA.*

Restriction on landlord's right to oppose application—Landlord's interest purchased or created less than five years before end of tenancy—Landlord's intention to occupy premises on termination of current sub-tenancy—Acquisition of lease in March, 1960—Fresh lease in April, 1960—Sub-tenancy granted in November, 1963—Termination of sub-tenancy in October, 1965—Landlord's interest within s 30(2) created more than five years before termination of sub-tenancy—Landlord and Tenant Act 1954, s 30(1)(g), (2). *Artemiou v Procopiou [1965] 3 539, CA.*

Restriction on landlord's right to oppose application—Landlord's interest purchased or created less than five years before end of tenancy—Lease of landlord expired—Landlord holding over as business tenant—Acceptance of conditional offer to grant lease—Conditions not fulfilled—Whether interest of landlord created within five years ending with termination of current tenancy—Landlord—Competent landlord—Landlord and Tenant Act 1954, ss 30(1)(g), (2), 44(1), 69(1), Sch 6, para 1. *Cornish v Brook Green Laundry Ltd [1959] 1 373, CA.*

Restriction on landlord's right to oppose application—Landlord's interest purchased or created less than five years before end of tenancy—Surrender of intermediate tenants' tenancy for no consideration within five years—Whether 'interest' 'purchased' by superior landlords—Evidence of intention of landlord—Landlord a limited company—No board meeting—Whether director's intention imputed to company—Landlord and Tenant Act 1954, s 30(1)(g), (2). *H L Bolton (Engineering) Co Ltd v T J Graham & Sons Ltd [1956] 3 624, CA.*

Restriction on landlord's right to oppose application—Merger of interest, which but for merger would be interest of landlord purchased or created less than five years before end of tenancy—Surrender of intermediate lease less than five years before end of tenancy—Less than fourteen months of surrendered term remaining (but for merger) at time of request for new tenancy—Whether right to oppose application excluded—Landlord and Tenant Act 1954, ss 30(2), 44(1). *Diploma Laundry Ltd v Surrey Timber Co Ltd [1955] 2 922, CA.*

Transfer of business—Landlord's business transferred to company—Company virtually wholly owned by landlord—Whether to be treated as business carried on by landlord—Landlord and Tenant Act 1954, s 30(1)(g). *Tunstall v Steigmann [1962] 2 417, CA.*

Trustee—Landlord a trustee—Intention that cestui que trust should occupy for purposes of cestui que trust's business—Landlord and Tenant Act 1954, s 30(1)(g), 41(2). *Sevenarts Ltd v Busvine [1969] 1 392, CA.*

Trustee—Term landlord to include 'beneficiaries under the trust or any of them'—Intended letting to beneficiary on commercial basis—Only beneficiaries having right as against trustee to occupy trust property by virtue of beneficial interests—'beneficiaries'—Landlord and Tenant Act 1954, ss 30(1)(g), 41(2). *Frish Ltd v Barclays Bank Ltd [1955] 3 185, CA.*

Intention of landlord to carry out substantial work of construction on part of holding—

Proposed work involving substantial construction of part of premises—Tenant willing to allow access for work to be carried out—Whether work could reasonably be done without obtaining possession—Landlord and Tenant Act 1954, s 30(1)(f). *Whittingham v Davies [1962] 1 195, CA.*

Whether work could reasonably be done without obtaining possession of holding—Landlord and Tenant Act 1954, s 30(1)(f). *Fernandez v Waidling [1968] 1 994, CA.*

Intention of landlord to carry out substantial work of reconstruction on the holding—

Landlord showing that he could not reasonably carry out proposed work without obtaining possession—Meaning of 'possession'—Lease reserving to landlord right of entry to carry out necessary repairs—Proposed work of reconstruction requiring exclusive occupation of premises by landlord for period of months—Landlord entitled to carry out work as necessary repairs under reservation in lease—Similar reservation to be included in proposed new tenancy—Whether possession meaning legal right to possession—Whether landlord able to carry out work without obtaining possession—Landlord and Tenant Act 1954, s 30(1)(f). *Heath v Drown [1972] 2 561, HL.*

New tenancy on economically separable part of holding—Remainder of holding reasonably sufficient to enable landlord to carry out intended work—Landlord having bona fide intention to construct building for particular purpose occupying whole area of holding—Tenant wishing to have new lease of small part of holding—Whether open to tenant to argue that landlord's purpose could be achieved by building confined to remainder of holding—Landlord and Tenant Act 1954, ss 30(1)(f), 31A(1)(inserted by the Law of Property Act 1969, s 7(1)). *The Decca Navigator Co Ltd v Greater London Council [1974] 1 1178, CA.*

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Opposition to grant of new tenancy of business premises (cont)—

Intention of landlord to carry out substantial work of reconstruction on the holding (cont)—

Premises comprised in holding—Wooden garage and a wall covering part only of site—Whole of site to be concreted, but no building to be erected—Notice stating ground of opposition not following wording of s 30(1)(f) of Landlord and Tenant Act 1954—Sufficiency of notice—Landlord and Tenant Act 1954, s 30(1)(f). **Housleys Ltd v Bloomer-Holt Ltd** [1966] 2 966, CA.

Notice of opposition—

Form and sufficiency—Landlord and Tenant Act 1954, s 26(6). **Marks v British Waterways Board** [1963] 3 28, CA.

Intention to demolish premises on termination of current tenancy and carry out substantial work of construction—Work reasonably be done without obtaining possession—Notice stating ground of opposition—Notice did not state that landlord could not reasonably do the work without obtaining possession of the holding—Whether notice valid—Landlord and Tenant Act 1954, ss 25(1), 30(1)(f). **Bolton's (House Furnishers) Ltd v Oppenheim** [1959] 3 90, CA.

Sufficiency. **Housleys Ltd v Bloomer-Holt Ltd** [1966] 2 966, CA.

Procedure—

Opposition on basis of intention to demolish or reconstruct premises—Determination in two stages—Issue whether opposition succeeds determined first—Terms of new tenancy, if any, to be settled at subsequent hearing—Landlord and Tenant Act 1954, s 30(1)(f). **Dutch Oven Ltd v Egham Estate and Investment Co Ltd** [1968] 3 100, ChD.

Option—

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Freehold reversion—Option separately assigned to mortgagee—Option exercised by mortgagee—Whether mortgagor entitled to conveyance of reversion on redemption. *See* **Mortgage** (Redemption)—Lease with option to purchase freehold reversion).

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Power of landlord to give notice to quit—

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Proof of intention of landlord to occupy holding—

Business premises. *See* Opposition to grant of new tenancy of business premises—Intention of landlord to occupy holding for purposes of business to be carried on by him—Proof of intention, *ante*.

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Possession. *See* **Rent restriction** (Possession).

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Intention to reconstruct business premises—

Opposition to grant of new tenancy—Meaning of reconstruct. *See* Opposition to grant of new tenancy of business premises—Intention of landlord to demolish or reconstruct premises comprised in holding—Reconstruct—Meaning, *ante*.

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Business premises—

Defence of absence of notice under Landlord and Tenant Act 1954—Tennis courts and premises let to tennis club—Club registered society under Industrial and Provident Societies Act 1893—Whether club carried on business—Landlord and Tenant Act 1954, s 23(1), (2). *Addiscombe Garden Estates Ltd v Crabbe* [1957] 3 563, CA.

Costs—

Action in High Court—Claim arising out of Rent Restrictions Acts raised in defence—Right of landlord to costs in High Court—Increase of Rent and Mortgage Interest (Restrictions) Act 1920, s 17(2). *Lee v K Carter Ltd* [1948] 2 690, CA.

Action in High Court—House within Rent Restrictions Acts—Acts not pleaded in defence—Right of landlord to costs in High Court. *Jaslowitz v Burstein* [1948] 1 40, KBD.

County court action—

Order for possession—Jurisdiction to postpone execution of order. *Jones v Savery* [1951] 1 820, CA.

Order for possession—No warrant to issue without leave of court—Limit to period of refusal of leave. *Air Ministry v Harris* [1951] 2 862, CA.

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Eviction—Tenant ejected by landlord without intervention of sheriff—Right of landlord personally to evict tenant. *Aglionby v Cohen* [1955] 1 785, QBD.

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Suspension of order—Discretion—Protection from Eviction Act 1964, s 2(4). *Crane v Morris* [1965] 3 77, CA.

Procedure before magistrates—

Application to magistrates for warrant—Notice of application—Service of notice—Service on tenant personally—Substituted service where tenant cannot be found—Need to prove due diligence to find missing tenant before substituted service permissible—Small Tenements Recovery Act 1838, s 2. *Stoker v Stansfield* [1972] 1 938, QBD.

Evidence—Evidence required to be taken on commission—No power in justices to order evidence to be taken on commission—Right of party to obtain declaration in High Court—Small Tenements Recovery Act 1838. *Sivyer v Amies* [1940] 3 285, ChD.

Warrant for possession—Action by tenant for trespass—Application for stay of execution of warrant—Magistrates' refusal to suspend execution pending hearing of action for trespass—Whether magistrates bound to bind over tenant if proper sureties provided—Small Tenements Recovery Act 1838, ss 1, 2, 3, 4. *R v Droxford Justices, ex parte Knight* [1943] 1 209, KBD.

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Mortgage expressly excluding power to let premises—Arrears for three months—Payment into court—Whether proceedings should be stayed under Common Law Procedure Act 1852, s 212—Whether statutory provisions applicable only where one half year's rent in arrear. *Standard Pattern Co Ltd v Ivey* [1962] 1 452, ChD.

Terms of relief—Mortgagee's application for relief—Whether previous history of mortgagee as tenant taken into consideration—Common Law Procedure Act 1852, s 210—Supreme Court of Judicature (Consolidation) Act 1925, s 46—Law of Property Act 1925, s 146(4). *Belgravia Insurance Co Ltd v Meah* [1963] 3 828, CA.

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Relief against forfeiture (cont)—

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Terms of relief—Power to extend time. **Chandless-Chandless v Nicholson** [1942] 2 315, CA.

Terms of relief—Sub-lessees of part of premises—Whether sub-lessees required to pay total arrears in respect of whole of premises or only that part protection the arrears attributable to the premises sub-let to them—Law of Property Act 1925, s 146(4). **Chatham Empire Theatre (1955) Ltd v Ultrans Ltd** [1961] 2 381, QBD.

Underlessee—Exceptional case—Sub-sub-lessee's application for relief—Bombed site—No rent paid for twenty-two years—Covenant to rebuild unlikely to be performed—Intervention of rights of innocent third party—Whether relief should be granted—Law of Property Act 1925, s 146(4). **Public Trustee v Westbrook** [1965] 3 398, CA.

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Breach of covenant—House converted into flats—Impracticability of reinstatement—Measure of damages. **Duke of Westminster v Swinton (Adams, third party, and Williams, fourth party)** [1948] 1 248, KBD.

Immoral user of premises—

Court's discretion to grant relief—Law of Property Act 1925, s 146(2). **Central Estates (Belgravia) Ltd v Woolgar (No 2)** [1972] 3 610, CA.

Suffering premises to be used as a brothel—User by sub-tenant—Knowledge of tenant—Imputation of knowledge—Court's discretion to grant relief—Law of Property Act 1925, s 146(2). **Borthwick-Norton v Romney Warwick Estates Ltd** [1950] 1 798, CA.

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Refusal of relief—

Grounds for refusal—Personal qualifications of tenant—Circumstances in which personal qualifications of tenant a relevant consideration—Personal qualifications of importance for preservation of value and character of property—Lease of country house to American citizen—Tenant banned from re-entering United Kingdom. **Earl Bathurst v Fine** [1974] 2 1160, CA.

Right to apply for relief—

Occupant of property acquiring title by adverse possession against landlord—Rent under lease paid by occupant and accepted by landlord—Landlord unaware that occupant not lessee nor acting on his behalf—Forfeiture of lease and re-entry by landlord—Whether occupant held under a yearly tenancy—Whether landlord estopped from denying occupant held under lease—Whether squatter having acquired title by adverse possession against leaseholder although not against freeholder, entitled to claim relief against forfeiture. **Tickner v Buzzacott** [1965] 1 131, ChD.

Underlessee—

Breach of covenant other than for payment of rent—Mortgage—Assignment of lease intended as security—Breach of covenant against assignment, etc—Winding-up of the company that was lessee and assignor—Whether mortgagee entitled to relief against forfeiture—Costs—Law of Property Act 1925, s 146(4). **Grangeside Properties Ltd v Collingwoods Securities Ltd** [1964] 1 143, CA.

Lease mortgaged—Relief of mortgagees—Conditions of relief—Full indemnity to landlord in respect of all costs in proceedings for breach of covenant and relief from forfeiture—Law of Property Act 1925, s 146(4). **Egerton v Jones** [1939] 3 889, CA.

Meaning of underlessee—Charge by way of legal mortgage—Relief to chargee against forfeiture—Law of Property Act 1925, ss 87(1), 146(4). **Grand Junction Co Ltd v Bates** [1954] 2 385, QBD.

Meaning of underlessee—Written undertaking by lessee to execute legal charge or mortgage in favour of third party as security under guarantee—Payment by third party under guarantee—Application by third party for relief against forfeiture—Law of Property Act 1925, s 146(4)(5)(d). **Re Good's Lease** [1954] 1 275, ChD.

Relief to mortgagee—Whether new lease subject to mortgagor's right to redeem. **Chelsea Estates Investment Trust Co Ltd v Marche** [1955] 1 195, ChD.

Underletting without consent—

Grounds for relief—Law of Property Act 1925, s 146(2). **House Property and Investment Co Ltd v James Walker, Goldsmith and Silversmith Ltd** [1947] 2 789, KBD, [1955] 3 506.

Mortgage—Sub-demise by way of security—Underlessees of sound financial standing—Winding-up of company that was lessee—Whether underlessees entitled to relief. **Grangeside Properties Ltd v Collingwoods Securities Ltd** [1964] 1 143, CA.

Relief of underlessee—Period of lease granted to underlessee—Property controlled under Rent Restrictions Acts—Increase of Rent and Mortgage Interest (Restrictions) Act 1920, s 15(3)—Law of Property Act 1925, s 146(4)—Underlessee an assisted person—Contribution assessed at nil—Order to pay sum equal to party and party costs as condition of relief under Law of Property Act 1925, s 146(4)—Legal Aid and Advice Act 1949, s 2(2)(e). **Factors (Sundries) Ltd v Miller** [1952] 2 630, CA.

Renewal of lease—

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Deserted wife in occupation under letting to husband—

Registration as estate contract—Land Charges Act 1925, s 10(1), Class C(iv), s 13(2). **Beesly v Hallwood Estates Ltd** [1961] 1 90, CA.

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Option—

Covenant to provide services previously supplied voluntarily—Impossibility of performance—Option to renew at rack rent—Meaning of 'rack rent'—Regulated tenancy—Registered rent—Option to renew at rent to be agreed—Failing agreement rent for renewed term to be 'commercial yearly rack rent' at which premises might be expected to be let in open market—Purported exercise of option—Subsequent registration of fair rent—Fair rent less than commercial yearly rack rent which could be expected in open market—Whether option capable of being exercised. **Newman v Dorrington Developments Ltd** [1975] 3 928, ChD.

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Notice of renewal—Note in rent book—Whether sufficient in memorandum in writing—Law of Property Act 1925, s 40. **Hill v Hill** [1947] 1 54, CA.

Option of 'continuing for an extension of seven or fourteen years'—Option exercisable providing tenant had 'reasonably' fulfilled his covenants—Whether option exercised by tenant's conduct in remaining in occupation after expiry of original term and paying rent reserved by lease—Whether, if tenant in breach of covenant to repair, option exercisable. **Gardner v Blaxill** [1960] 2 457, QBD.

Option of taking a further lease granted by agreement in writing (but not under seal), executed on same date as lease—Whether option for renewal of lease or void as infringing rule against perpetuities—Whether obligation to grant new lease run with reversion—Whether agreement was 'covenant' within Law of Property Act 1925, s 142(1). **Weg Motors Ltd v Hales** [1961] 3 181, CA.

Time for exercise of option—Lease for 35 years—Covenant to renew on request of lessees 'made 6 months before the expiration of the term'—Request to renew made within 10 days of date of lease. **Biondi v Kirklington and Piccadilly Estates Ltd** [1947] 2 59, ChD.

Perpetual right of renewal—

Construction—Lease for three years with option to renew for further period of three years on same terms 'including the present covenant for renewal'—Law of Property Act 1922, s 145, Sch XV, para 5. **Re Greenwood's Agreement** [1950] 1 436, CA.

Construction—Notice to quit by head landlords—Landlord for five years with option to renew for further period of five years on the same terms 'as are herein contained (including an option to renew such lease for the further term of five years at the expiration thereof)'—Whether lease perpetually renewable—Law of Property Act 1922, Sch 15, para 5. **Re Hopkins's Lease** [1972] 1 248, CA.

Construction—Option to renew tenancy for a 'period of months on the same terms and conditions including this clause'—Whether tenant has perpetual right of renewal. **Green v Palmer** [1944] 1 670, ChD.

Rent—

Administrator of deceased tenant—

Liability for rent. *See* **Executor and administrator** (Contract—Liability of administrator—Tenancy agreement—Implied obligation—Obligation to pay rent so long as tenancy subsisting).

Agreement for increase—

Rent book required by law not supplied by landlord—Whether rent recoverable by action—Landlord and Tenant Act 1962, s 4. **Shaw v Groom** [1970] 1 702, CA.

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Interim rent—Application by landlord for determination of rent during continuance of tenancy—Date from which rent payable—Landlord and Tenant Act 1954, s 24A. **Stream Properties Ltd v Davis** [1972] 2 746, ChD.

Interim rent—Application by landlord for determination of rent during continuance of tenancy—Determination of interim rent—Application by landlord—Discretion of court—Rent which it would be reasonable for tenant to pay—Market rent of hypothetical yearly tenancy—Regard to be had to rent payable under terms of existing tenancy—Landlord and Tenant Act 1954, ss 24A (added by the Law of Property Act 1969, ss 3(1)), 34. **English Exporters (London) Ltd v Eldonwall Ltd** [1973] 1 726, ChD.

Interim rent—Application by landlord for determination of rent during continuance of tenancy—Determination of rent—Landlord and Tenant Act 1954, s 24A(3) (added by Law of Property Act 1969, s 3(1)). **Regis Property Co Ltd v Lewis & Peet Ltd** [1970] 3 227, ChD.

Limitation—Prohibition on increase in rate of rent—Counter-inflation legislation—Rent not payable at rate exceeding standard rate—Standard rate—Rate at which rent was payable in respect of premises on specified date—Different tenancies of separate parts of premises subsisting on specified date—Subsequent lease of premises—Single tenancy of whole premises—Whether 'standard rate' for premises as a whole—Counter-inflation (Business Rents) Order 1972 (S.I. 1972 No 1850), paras 2(2), 4—Counter-inflation (Business Rents) Order 1973 (S.I. 1973 No 741), arts 3, 4, 5. **Number 20 Cannon Street Ltd v Singer & Friedlander Ltd** [1974] 2 577, ChD.

New tenancy—Determination of rent—Disregard of improvements carried out by tenant—Whether improvements made before current tenancy to be disregarded in determining rent payable on grant of new tenancy—Landlord and Tenant Act 1954, s 34(c). **Re 'Wonderland', Cleethorpes** [1963] 2 775, HL.

New tenancy—Power of tribunal to fix rent above standard rent—Increase of Rent and Mortgage Interest (Restrictions) Act 1920, s 1—Landlord and Tenant Act 1927, s 5(2). **Rose v Hurst** [1949] 2 24, CA.

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Rent (cont)—

Business premises (cont)—

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Coal mining lease, under. *See* Coal mining (Mining lease—Rent).

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Payment to be either in gold or in Bank of England notes to the equivalent value in gold sterling of specified sum—Whether fixing amount to be paid or determining manner in which fixed amount to be discharged. *Treseder-Griffin v Co-operative Insurance Society Ltd* [1956] 2 33, CA.

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Exclusive use of part of house given in return for services—

Whether performance of services constituting rent. *See* Rent restriction (Rent—Exclusive use of part of house given in return for services).

Fair rent—

Generally. *See* Rent restriction (Fair rent).

Local authority houses. *See* Housing (Local authority houses—Rent—Fair rent).

House constructed under building licence—

Permitted rent. *See* Housing (House constructed under building licence—Permitted rent).

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Annual value of land. *See* Income tax (Land—Annual value—Rent).

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Mining rents. *See* Income tax (Mining rents).

Increase—

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Joint tenancy—

Death of one of two joint tenants—Tenancy of committee rooms—Liability of executors for contribution towards payment of rent—Law of Property Act 1925, ss 34(2), 36. *Cunningham-Reid v Public Trustee and Underwood* [1944] 2 6, CA.

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Prohibition on increase in rate of rent—Business premises—Counter-inflation legislation—Crown—Premises leased to Secretary of State—Increase in rent not payable during standstill period—Whether Secretary of State liable to pay increased rent—Whether counter-inflation legislation applicable to Crown—Crown Proceedings Act 1947, s 31(1)—Counter-inflation (Business Rents) Order 1972 (SI 1972 No 1850), art 3. *Town Investments Ltd v Department of the Environment* [1976] 3 479, CA.

Prohibition on increase in rate of rent—Business premises—Premises occupied by the tenant for the purposes of a business carried on by him—Business—Government business—Premises leased to Secretary of State—Whether premises occupied by Secretary of State 'for the purposes of a business carried on by him'—Counter-inflation (Business Rents) Order 1972 (SI 1972 No 1850), art 2(2). *Town Investments Ltd v Department of the Environment* [1976] 3 479, CA.

Prohibition on increase in rate of rent—Business premises—Premises occupied by the tenant for the purposes of a business carried on by him—Occupied—Premises leased to Secretary of State on behalf of Crown—Premises occupied by Crown servants in other government departments—Whether premises 'occupied' by Secretary of State—Counter-inflation (Business Rents) Order 1972 (SI 1972 No 1850), art 2(2). *Town Investments Ltd v Department of the Environment* [1976] 3 479, CA.

Local authority houses. *See* Housing (Local authority houses—Rent).

Payment—

Recognition of landlord's title—Payment in ignorance of true state of title—Onus of proof. *Hindle v Hick Bros Manufacturing Co Ltd* [1947] 2 825, CA.

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Sub-letting room without consent—No consideration—Reduced rent paid—Binding effect of promise—Effect of ending of war-time conditions. *Central London Property Trust Ltd v High Trees House Ltd* (1946) [1956] 1 256, KBD.

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Rent reserved—

Sub-letting without consent—Lease—Estate agent's commission—Commission calculated as percentage of year's rent—Rent defined as 'rent reserved by the letting'—Amount of rent payable under lease restricted by statute—Counter-inflation legislation—Restrictions on rent of business premises—Agreed rent under lease £20,000—Rent payable restricted by statute to £600—Whether 'rent reserved' rent provided for by lease or rent payable by virtue of statute. *Brecker Grossmith & Co v Canworth Group Ltd* [1974] 3 561, QBD.

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Rent (cont)—

Review—

Failure to comply with time limits—Construction of clause—Time of the essence—Presumption that time of the essence—Clause not expressed in terms of option—Commercial importance to parties of consequences of rent review being known before commencement of period to which new rent would apply—Unnecessary for clause to be expressed as option for time limits to be mandatory—Presumption that parties intend time limits to be mandatory unless terms of clause leading to opposite construction. **United Scientific Holdings Ltd v Burnley Corp** [1976] 2 220, CA.

Failure to comply with time limits—Effect—Clause providing machinery for determination of rent for specified period of term—No other provision in lease for rent during that period—Notice to operate clause to be given by landlord within specified time limits before termination of preceding period of term—Failure of landlord to give notice within time limits—Validity of notice given subsequently. **Kenilworth Industrial Sites Ltd v E C Little & Co Ltd** [1975] 1 53, CA.

Failure to comply with time limits—Effect—Lease providing that rent might be reviewed at option of lessor at end of seventh year of term—Condition precedent that lessor serve notice of intention to exercise option 'not later than two quarters before the expiry' of the seventh year—Seventh year expiring on 7th July 1971—Notice served by lessor on 22nd February—Notice served 'later than two quarters' before expiry of seventh year—Whether strict adherence to time limit necessary—Whether lessor entitled to equitable relief. **Samuel Properties (Developments) Ltd v Hayek** [1972] 3 473, CA.

Failure to comply with time limits—Option to require review—Right conferred on landlord in nature of option—Right conferred on landlord to require arbitration in event of failure to agree on revised rent—Right to be exercised within specified time limit—Whether time limit mandatory—Whether landlord capable of making valid application for arbitration after expiry of time limit. **Mount Charlotte Investments Ltd v Leek and Westbourne Building Society** [1976] 1 890, ChD.

Retrospective operation—Time for review—Date for ascertainment of new rent—Increased rent payable from specified date—Landlords failing to take steps to secure a review on or before specified date—Effect—Provision for increase in rent if market rental value 'found' to exceed existing rent on specified date—Increased rent to be 'substituted from such date'—Market value on specified date eventually determined over three years later—Whether landlords entitled to invoke rent review clause—Whether increased rent payable from specified date or from date of ascertainment. **C H Bailey Ltd v Memorial Enterprises Ltd** [1974] 1 1003, CA.

Waiver by landlord of breach of covenant against sub-letting—Effect—Clause providing machinery for determination of rent for specified period of term—No other provision in lease for rent during that period—Notice to operate clause to be given by landlord within specified time limits before termination of preceding period of term—Unreasonable delay—Failure of landlord to give notice before termination of preceding period—Notice given six months after commencement of review period—Whether time of the essence—Whether notice effective. **Accuba Ltd v Allied Shoe Repairs Ltd** [1975] 3 782, ChD.

Suspension of rent—

Eviction by title paramount—Demolition under dangerous structure notice—Frustration of lease—Breach of covenant of quiet enjoyment. **Popular Catering Assn Ltd v Romagnoli** [1937] 1 167, KBD.

Time at which rent becomes due—

Quarterly rent—Right of action arising at last moment of quarter day—Apportionment. **Re Aspinall (decd)** [1961] 2 751, ChD.

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Breach of covenant—

Forfeiture of lease. *See* Forfeiture of lease—Breach of repairing covenant, *ante*.

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Construction of covenant—

Covenant to keep external walls in tenantable repair—Old house—Dampness—'External wall'. **Pembrey v Lamdin** [1940] 2 434, CA.

Covenant to 'repair and renew'—'Renew'—'Repair' covers renewal of part of premises, but not an improvement to eliminate inherent defects. **Collins v Flynn** [1963] 2 1068, QBD.

Covenant to repair 'main walls' of dwelling-house—Whether windows form part of main walls. **The Holiday Fellowship Ltd v Viscount Hereford** [1959] 1 433, CA.

Covenant to undertake 'structural repairs of a substantial nature'. **Granada Theatres Ltd v Freehold Investment (Leytonstone) Ltd** [1959] 2 176, CA.

Necessary work—Whether necessary work to be considered as whole, or piecemeal, to determine whether it is 'repair', or so great that outside covenant—Overlapping covenants. **Brew Brothers Ltd v Snax (Ross) Ltd** [1970] 1 587, CA.

Power to determine lease for seven years at end of five years—Covenant to paint in 'the last quarter of the said term'—Whether covenant applies when lease determined at end of five years. **Dickinson v St Aubyn** [1944] 1 370, CA.

Cost of repairs—

Repair done by landlord at request of prospective tenant—Breakdown of negotiations—Fault of tenant—Work done for tenant's benefit—Liability for cost of work. **Brewer Street Investments Ltd v Barclays Woollen Co Ltd** [1953] 2 1330, CA.

Damages for breach of covenant to repair. *See* Damages for failure to repair, *ante*.

Delay—

Effect—Undertaking by landlord to repair—Delay in effecting repairs—Tenant injured by fall of ceiling—Reasonableness of tenant in using room. **Porter v Jones** [1942] 2 570, CA.

Implied covenant. *See* Implied covenant to repair, *ante*.

LANDLORD AND TENANT (cont)

Repair (cont)—

Landlord's covenant—

Notice of intention to do repairs—Sufficiency. **Granada Theatres Ltd v Freehold Investment (Leytonstone) Ltd** [1959] 2 176, CA.

Repairing prevented by tenant—Whether tenant entitled to damages for breach of covenant to repair. **Granada Theatres Ltd v Freehold Investment (Leytonstone) Ltd** [1959] 2 176, CA.

Time when obligation to repair arises—Obligation to repair not arising in the absence of notice of want of repair or actual knowledge—Collapse of floor owing to dry rot—Injury to manager of lessee company—Action by lessee to recover compensation paid to manager. **Uniproducs (Manchester) Ltd v Rose Furnishers Ltd** [1956] 1 146, Assizes.

Lien. *See* Lien (Mortgaged property).

Machinery or plant—

Wear and tear allowance. *See* Income tax (Deduction in computing profits—Wear and tear of machinery or plant—Lessor and lessee).

Want of—

Liability to adjoining owners—Collapse of house on adjoining premises—Landlord liable to do repairs—Knowledge of landlord. **Wringe v Cohen** [1939] 4 241, CA.

Repudiation—

Agreement for lease. *See* Agreement for lease—Repudiation, *ante*.

Lease. *See* Lease—Repudiation, *ante*.

Residential property—

Security of tenure—

Statutory protection—Agreement purporting to exclude statutory provisions void—Statute not preventing surrender of tenancy—Surrender—Agreement to surrender in futuro—Agreement giving landlord option to purchase residue of term in certain events—Agreement by tenant to surrender tenancy in those events—Whether agreement to surrender tenancy in futuro void by virtue of statute—Landlord and Tenant Act 1954, s 17. **Re Hennessey's Agreement** [1975] 1 60, ChD.

Restriction on landlord's right to oppose application for grant of new tenancy—

Business premises. *See* Opposition to grant of new tenancy of business premises—Intention of landlord to occupy holding for purposes of business to be carried on by him—Restriction on landlord's right to oppose application, *ante*.

Restrictive covenant—

Restriction on landlord's user of adjoining premises—

Premises let to tobacconist—Landlord's covenant not to permit adjoining premises to be used for 'business of sale of tobacco, cigars and cigarettes'—Adjoining premises let to caterers—Caterers selling cigarettes on premises—Whether business of 'sale of tobacco, cigars and cigarettes'. **A Lewis & Co (Westminster) Ltd v Bell Property Trust Ltd** [1940] 1 570, ChD.

Reversion—

Lease—

Option to purchase. *See* Lease—Reversion—Option granted to tenant to purchase freehold reversion, *ante*.

Reversionary tenancy. *See* Tenancy—Reversionary tenancy, *post*.

Road charges—

Covenant—

Payment of all assessments, impositions and outgoings whatsoever. *See* Covenant—Payment of all assessments, impositions and outgoings whatsoever—Road charges, *ante*.

Sale of land—

Tenant in occupation. *See* Sale of land (Notice—Tenant in occupation).

Security of tenure—

Contracting out of statutory provisions governing security of tenure—

Business premises. *See* Business premises—Contracting out—Agreement by landlord and tenant excluding statutory provisions governing security of tenure, *ante*.

Residential property. *See* Residential property—Security of tenure, *ante*.

Service occupancy—

Agricultural worker—

Suspended order for possession—Costs. *See* Agriculture (Agricultural worker—Tied cottage—Possession—Suspended order for possession).

Small tenement—

Recovery of possession. *See* Small tenement—Recovery of possession—Service occupancy, *post*.

Service of notice to quit—

Business premises. *See* Notice to quit—Business premises—Service, *ante*.

Shared accommodation—

Accommodation shared by tenant and sub-tenant—

Weekly tenancy—Implication of liability of landlord—Right to enter and effect repairs. **Mint v Good** [1950] 2 1159, CA.

Shop—

New tenancy. *See* New tenancy—Shop, *ante*.

Short lease—

Dwelling house—

Implied covenant to repair. *See* Implied covenant to repair—Short lease of dwelling—house, *ante*.

Small tenement—

Recovery of possession—

Notice of intention to proceed—Form of notice—Statutory tenancy—Small Tenements Recovery Act 1838, s 1, Sch. **Bowden v Rallison** [1948] 1 841, KBD.

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Small tenement (cont)—

Recovery of possession (cont)—

Notice of intention to proceed—Signature—Notice of intended application signed by housing manager as agent of local authority—Whether notice validly signed—Small Tenements Recovery Act 1838, ss 1, 7—Housing Act 1957, 158(2), 166(2). *R v Berkshire (Forest) Justices, ex parte Dallaire* [1961] 3 1138, QBD.

Oral permission to occupy for life—Licence or tenancy—Law of Property Act 1925, s 54—Small Tenements Recovery Act 1838, s 1. *Buck v Howarth* [1947] 1 342, KBD.

Service occupancy—Occupation as licensee—House occupied free of rent by farm stockman—Small Tenements Recovery Act 1838, s 1. *Ramsbottom v Snelson* [1948] 1 201, KBD.

Specific performance—

Covenant to repair. *See* Breach of covenant to repair—Specific performance, *ante*.

Sporting rights—

Reservation in lease. *See* Lease—Reservation—Sporting rights, *ante*.

Statutory requirements—

Lease. *See* Lease—Statutory requirements, *ante*.

Statutory tenancy—

Implied grant of lease—

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Sub-lease—

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Business premises—

Notice to quit. *See* Notice to quit—Business premises—Sub-tenancy of part of premises, *ante*.

Surrender of tenancy—

Continuation by statute—

Business premises. *See* Business premises—Continuation of tenancy—Surrender, *ante*.

Restriction on agreements purporting to preclude tenant applying for new tenancy—

Agreement by tenants to give up possession at future date—Business premises—Whether agreement void in so far as it 'purports' to preclude tenants from applying for new tenancy—Whether agreement takes effect as surrender of existing tenancy for longer term—Landlord and Tenant Act 1954, s 38(1). *Joseph v Joseph* [1966] 3 486, CA.

Surrender by deed in consideration of new lease—

New lease invalid—Effectiveness of surrender. *Rhyl Urban District Council v Rhyl Amusements Ltd* [1959] 1 257, ChD.

Surrender by operation of law—

Agreement between landlord and tenant for increase of rent—Whether agreement amounted to surrender of existing tenancy and grant of new tenancy. *Jenkin R Lewis & Son Ltd v Kerman* [1970] 3 414, CA.

Grant of option to extend term—Operation as surrender and grant of new lease—Effective from grant rather than exercise of option—Liability of lessee assigning after grant but before exercise of option—Rent and dilapidations after end of original term. *Baker v Merckel (Anson third party, White fourth party)* [1960] 1 668, CA.

Sub-letting of room subject to Rent Acts—Subsequent taking over of three other rooms—Three other rooms not let and not subject to Rent Acts—Whether implied surrender of one room. *Fredco Estates Ltd v Bryant* [1961] 1 34, CA.

Surrender on grant of new tenancy—Agreement—Inference of agreement to surrender tenancy and substitute new tenancy—Weekly tenancy—Transfer of reversion to new landlord—New landlord giving tenant new rent book—Terms stated in rent book differing in some respects from terms stipulated by previous landlord—New rent book stating that house let on terms stated where such terms not inconsistent with existing tenancy—Rent unchanged—Whether terms in new rent book supporting inference of agreement—Whether agreement to substitute new tenancy. *Smirk v Lyndale Developments Ltd* [1975] 1 690, CA.

Surrender on grant of new tenancy—New tenancy not effective—Whether existing tenancy surrendered if new tenancy not effective. *Barclays Bank Ltd v Stasek* [1956] 3 439, ChD.

Tenancy from year to year—Termination—Grant of licence to former tenant to occupy premises rent free. *Foster v Robinson* [1950] 2 342, CA.

Suspension of possession order—

Discretion to suspend. *See* Recovery of possession—Order for possession—Suspension of order—Discretion, *ante*.

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Tenancy—

Agreement—

Death of tenant—Liability of administrator of tenant's estate for rent. *See* Executor and administrator (Contract—Liability of administrator—Tenancy agreement—Implied obligation—Obligation to pay rent so long as tenancy subsisting).

Contribution to rent—

Informal arrangement—Constructive trust. *See* Trust and trustee (Constructive trust—Tenancy agreement—Contribution to rent).

Creation—

Wartime—Cottage let rent free for period for war—Subsequent lease of land including cottage—Claim by lessee for possession of cottage for occupation by labourer—Whether existing occupier entitled to retain possession. *Booker v Palmer* [1942] 2 674, CA.

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Tenancy (cont)—

Devolution—

Statutory tenancy. *See* **Rent restriction** (Death of tenant).

Duration—

Presumption of yearly tenancy—Tenancy for one year at weekly rent—Holding over at weekly rent—Rebuttal of presumption of yearly tenancy—Notice to quit on basis of weekly tenancy—Claim for compensation or new lease under Landlord and Tenant Act 1927, ss 4(1), 5(1)(2). **Adler v Blackman** [1952] 2 945, CA.Presumption of yearly tenancy—Tenant for years remaining in possession—Rent payable weekly. **Covered Markets Ltd v Green** [1947] 2 140, KBD.Terms of years or from year to year—Letting for successive periods of 364 days. **Land Settlement Assn Ltd v Carr** [1944] 2 126, CA.

Grant—

Beneficiary granting tenancy—Premises held by trustees on trust for sale—Life tenant let into possession—Life tenant granted weekly tenancy—Whether valid contractual tenancy. **Stratford v Syrett** [1957] 3 363, CA.Inference of agricultural tenancy from occupation for an annual payment. **Holder v Holder** [1968] 1 665, CA.Licence distinguished. *See* **Licence** (Licence to occupy land—Licence distinguished from tenancy).

New tenancy of business premises—

Failure of Solicitor to give notice of tenant's unwillingness to give up possession. *See* **Solicitor** (Negligence—Damages—New tenancy of business premises).

Occupation in return for services—

Whether tenancy or licence to occupy. *See* **Rent restriction** (Rent—Exclusive use of part of house given in return for services).

Periodic tenancy—

Creation—Sub-tenant going into possession—Payment of rent—Whether sub-tenant entitled to protection of interest valid between himself and immediate landlord—Sub-tenant not party to headlease—Landlord and Tenant Act 1954, s 23(4). **D'Silva v Lister House Development Ltd** [1970] 1 858, ChD.

Reversionary tenancy—

Agreement to grant future tenancy—Landlord and Tenant Act 1954, ss 28, 65(3). **Bowes-Lyon v Green** [1961] 3 843, HL.Surrender. *See* Surrender of tenancy, *ante*.

Tenancy at will—

Accrual of right of action of person entitled to land. *See* **Limitation of action** (Land—Adverse possession—Tenancy at will).Creation—Inference—Factors to be considered—Intention of parties—Evidence. **Cobb v Lane** [1952] 1 1199, CA.Creation—Inference—Permission to occupy premises conditional on payments being made to third party—Whether tenancy at will or licence. **Errington v Errington** [1952] 1 149, CA.Express agreement for tenancy at will of business premises—Whether protected tenancy. **Manfield & Sons Ltd v Botchin** [1970] 3 143, QBD.

Tenancy by estoppel—

Feeding the estoppel—Underlease purported to be granted by equitable mortgagor whose statutory power of leasing was excluded—Legal term subsequently acquired by mortgagor—Whether doctrine of feeding the estoppel of any avail against mortgagee. **Rust v Goodale** [1956] 3 373, ChD.Passing of tenant's right to enforce estoppel to tenant's personal representative—Conversion of right into tenancy. **Mackley v Nutting** [1949] 1 413, CA.Repairing covenant by lessee—Lease granted by one of several proving executors—Lessor not having power to demise legal estate—Whether lessee estopped from denying lessor's title after surrendering tenancy—Whether repairing covenant enforceable by lessor's successor in title. **Harrison (Executor of B M Tulk-Hart, decd) v Welis** [1966] 3 524, CA.Transmission of statutory tenancy on death of tenant—Vesting of legal estate in President of Probate, Divorce and Admiralty Division—Member of family residing with tenant—Increase of Rent and Mortgage Interest (Restrictions) Act 1920, s 12(1)(g). **Whitmore v Lambert** [1955] 2 147, CA.

Termination of tenancy—

Tenancy from year to year—Denial of landlord's title—Whether sufficient to cause termination of tenancy. **Wisbech St Mary Parish Council v Lilley** [1956] 1 301, CA.

Terms of tenancy—

Evidence—Rent book. **Moses v Lovegrove** [1952] 1 1279, CA.

Willfully holding over after determination of term—

Willfully—Action for double value—Landlord and Tenant Act 1730, s 1. **French v Elliott** [1959] 3 866, QBD.

Tenancy agreement—

Implied grant—

Right enjoyed with land at time of agreement—Use of coal shed. **Wright v Macadam** [1949] 2 565, CA.Indemnity. *See* **Indemnity** (Tenancy agreement).

Rectification—

Repairs provision misconstrued by tenant and original landlord—Farm occupied country tenant sold by landlord to purchaser for value—Constructive notice—Inquiries—Tenant's equity to rectify not effective against purchaser—Law of Property Act 1925, s 199(1)(ii)(a). **Smith v Jones** [1954] 2 823, ChD.

Registration as estate contract—

Effect on subsequent mortgages. *See* **Land charge** (Estate contract—Tenancy agreement—Effect of registration on subsequent mortgages).

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Tenancy at will—

Business premises. *See* Business premises—Tenancy—Tenancy at will, *ante*.

New tenancy—

Shop. *See* New tenancy—Shop—Tenancy at will, *ante*.Notice to quit. *See* Notice to quit—Tenancy at will, *ante*.

Termination of tenancy—

Allotment. *See* Allotment (Allotment garden—Termination of tenancy).Compensation to landlord for deterioration of agricultural holding. *See* Agricultural holding (Termination of tenancy—Compensation—Landlord).Compensation to tenant of agricultural holding for disturbance. *See* Agricultural holding (Termination of tenancy—Compensation—Tenant).Generally. *See* Tenancy—Termination of tenancy, *ante*.

Title—

Right of tenant to question landlord's title—

Estoppel. *E H Lewis & Son Ltd v Morelli* [1948] 2 1021, CA.

Underlease—

Contract to grant underlease—

Failure to register as estate contract. *See* Land charge (Failure to register—Estate contract—Contract to grant underlease).

Forfeiture of lease—

Arrears of rent—Relief. *See* Relief from forfeiture—Arrears of rent—Underlessee, *ante*.Relief against forfeiture. *See* Relief against forfeiture—Underlessee, *ante*.Generally. *See* Lease—Underlease, *ante*.

Unusual covenants restricting user—

Omission of solicitor to advise and/or warn client of effect. *See* Solicitor (Client—Negotiation of grant of underlease to architects—Unusual covenants in underlease restricting User—Omission of solicitor to advise and/or warn client on effect).

Underlessee—

Forfeiture of lease—

Relief against forfeiture. *See* Relief against forfeiture—Underlessee, *ante*.

Underletting without consent—

Forfeiture of lease—

Relief. *See* Relief against forfeiture—Underletting without consent, *ante*.

Undertaking to grant lease—

Validity against purchaser of land. *See* Land charge (Estate contract—Yearly tenancy under written agreement—Undertaking to grant ten years' lease).

Unincorporated association—

Status—

Separate entity—Landlord's opposition to grant of new tenancy. *See* Unincorporated association (Status—Separate entity—Landlord's opposition to grant of new tenancy).

Use and occupation—

Action for use and occupation in absence of lease—

Necessity for agreement express or implied—Husband and wife—Matrimonial home owned by wife—Husband remaining in home after divorce against wife's will—Husband a trespasser—Absence of intention to create relationship of landlord and tenant—Wife not entitled to action for use and occupation. *Morris v Tarrant* [1971] 2 920, QBD.

User of premises—

Covenant. *See* Covenant—User of premises, *ante*.

Validity of notice to quit—

Business premises—

Notice to quit given, in accordance with lease, after Landlord and Tenant Act 1954 came into operation—Notice not in form required by 1954 Act—Whether notice effective—Landlord and Tenant Act 1954, ss 24(1), 25(1). *Re Bleachers' Assn Ltd's Leases, Weinbergs Weatherprofs Ltd v Radcliffe Paper Mill Co Ltd* [1957] 3 663, ChD.

Agreement for tenancy for three months 'and afterwards from year to year'—

Tenancy determinable on three months' notice at any time. *H & G Simonds Ltd v Heywood* [1948] 1 260, KBD.

Ambiguity—

Notice to terminate tenancy 'at the end of the last quarter of this year'—Whether ambiguous. *Winchester Court Ltd v Holmes* [1941] 2 542, KBD.Notice to terminate tenancy 'by the date'—Whether ambiguous. *Easthough v Macpherson* [1954] 3 214, CA.Notice to terminate tenancy on or before specified date—Whether ambiguous—Rent and Mortgage Interest Restrictions (Amendment) Act 1933, s 3, Sch I(h). *Dagger v Shepherd* [1946] 1 133, CA.

Business premises—

Lease for 20 years determinable by either party by notice at end of seventh year—Notice, in accordance with lease, given by landlord after Landlord and Tenant Act 1954 in operation—Notice not in form required by Act—Landlord and Tenant Act 1954, ss 24(1), 25(1). *Re Bleachers' Assn Ltd's Leases* [1957] 3 663, ChD.New tenancy for three years 'from' 1st May 1963—First rent payable on 1st May 1963—Rent payable in advance—Notice terminating tenancy on 30th April 1966—Landlord and Tenant Act 1954, s 25(4). *Ladyman v Wirral Estates Ltd* [1968] 2 197, Assizes.Notice to quit given before but expiring after decontrol by Rent Act 1957—Notice not in form required by Landlord and Tenant Act 1954—Whether notice effective—Landlord and Tenant Act 1954, s 24(3)(b). *Brown v Jamieson* [1959] 1 144, CA.Prescribed form—Date incomplete—Year of termination of tenancy left blank—Landlord and Tenant Act 1954, s 25, s 66(2)—Landlord and Tenant (Notices) Regulations 1957 (SI 1957 No 1157), reg 4(vii). *Sunrose Ltd v Gould* [1961] 3 1142, CA.

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Validity of notice to quit (cont)—

Business premises (cont)—

Prescribed form—Landlord accidentally failing to strike out one of alternative sentences—Notice stating that landlord would not oppose application by tenant for new tenancy and that landlord would oppose application—Landlord intending to oppose—Notice stating grounds of opposition—Whether notice to be construed as stating landlord would oppose application—Landlord and Tenant Act 1954, s 25(6). **Lewis v MTC (Cars) Ltd** [1974] 3 423, ChD.

Prescribed form—Notice stating landlord would not oppose application to court for new tenancy provided rent and performance of covenants guaranteed by person approved by landlord—Notice on prescribed form containing notes which set out grounds on which landlord entitled to oppose application to court under Landlord and Tenant Act 1954—Notice did not state of opposition—Landlord and Tenant Act 1954, s 25(6). **Barclays Bank Ltd v Ascott Mortgage 1** 782, QBD.

Second notice—First notice to quit given before operation of Landlord and Tenant Act 1954—Notice expiring after Act in operation—Notice under Landlord and Tenant Act 1954 served after expiry of first notice—Validity of second notice—Landlord and Tenant Act 1954, s 25. **Castle Laundry (London) Ltd v Read** [1955] 2 154, QBD.

Statute coming into force during period of notice—Notice to quit given after the Landlord and Tenant (Notices) Regulations 1954 (SI 1954 No 1107), but before Landlord and Tenant Act 1954 in operation—Notice expiring after Act in operation—Notice not in prescribed form—Landlord and Tenant Act 1954, s 24(1), (3), Sch 9, para 1. **Orman Bros Ltd v Greenbaum** [1955] 1 610, CA.

Date for termination—

Lease determinable by three months' notice at any time—No date for possession specified in notice. **W Davis (Spitalfields) Ltd v Huntley** [1947] 2 371, CA.

Lease for fixed term then quarterly—Notice served before expiration of fixed term. **British Iron and Steel Corp'n Ltd v Halpern** [1946] 1 408, KBD.

Lease for two years and thereafter for consecutive periods of two quarters—Lease determinable on or after given date by two quarters' previous notice in writing—Lease determined by landlords by notice expiring on given date. **Associated London Properties Ltd v Sheridan** [1946] 1 20, KBD.

Tenancy for fixed term followed by tenancy from year to year—Notice to quit at 'expiration of your tenancy which will expire next after the end of one half year from the service of this notice'. **Addis v Burrows** [1948] 1 177, CA.

Death of tenant—

Notice given before grant of letters of administration—No service on President of Probate Division—Service on persons in occupation—Notice addressed to 'tenants' executors...and to all others whom it may concern'—Grant of letters of administration before date of operation of notice to quit. **Harrowby (Earl) v Snelson** [1951] 1 140, Assizes.

Error or mistake—

Meaning of notice clear to tenant—Erroneous date given for termination of tenancy—Landlord having right to determine lease on 27th September 1975 by giving 12 months' notice—Notice given in 1974 referring to termination of lease on 27th September 1973—Clerical error—Whether a valid notice to terminate lease on 27th September 1975. **Carradine Properties Ltd v Aslam** [1976] 1 573, ChD.

Landlord a company—

Director who acted on behalf of company named as landlord in notice to quit—Notice expressed to be given on behalf of director as landlord—Director had acted as if landlord and tenant understood him to be landlord. **Harmond Properties Ltd v Gajdzis** [1968] 3 263, CA.

Notice by mortgagor—

Notice given by mortgagor after service on him of mortgagee's summons for possession. **Bolton Building Society v Cobb** [1965] 3 814, ChD.

Notice by purchaser—

Notice given by purchaser after execution of conveyance, but before payment of purchase money in full. **Thompson v McCullough** [1947] 1 265, CA.

Notice to quit dwelling—

Notice to be given not less than four weeks before date on which it is to take effect—Four weeks—Four clear weeks necessary—Rent Act 1957, s 16. **Thompson v Stimpson** [1960] 3 500, QBD.

Periodic tenancy—

Certainty of duration—Weekly tenancy—Written memorandum of agreement—Memorandum expressing tenancy 'to continue until determined by the lessee'—Whether lessor having right to determine—Whether tenancy void for uncertainty—Whether fetter on lessor's right to determine void as being repugnant to nature of periodic tenancy. **Centaploy Ltd v Matlodge Ltd** [1973] 2 720, ChD.

Certainty of duration—Written agreement—Notice to be three months by either party—Proviso that landlord might give notice only if premises required for specified purposes—Whether proviso void as creating a term of uncertain duration—Whether proviso void as repugnant to nature of periodic tenancy. **Charles Clay & Sons Ltd v British Railways Board** [1971] 1 1007, CA.

Date of expiration—Expiration at end of current period—Date of last day of period. **Crate v Miller** [1947] 2 45, CA.

Reference to demised property—

Reference to part only of demised property. **Woodward v Dudley (Earl)** [1954] 1 559, ChD.

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Validity of notice to quit (cont)—

Reversion severed—

Notice as to severed part by owner of that part. **Smith v Kinsey** [1936] 3 73, CA.

Signature—

Agreement providing for signature by landlord's valuer—Signature by valuer's assistant in valuer's name—No indication that signature not valuer's. **London County Council v Vitamins Ltd** [1955] 2 229, CA.Agreement providing for signature on behalf of local authority's director of housing and valuer—Department split into two—Notice signed by valuer—No evidence that valuer authorised to sign it. **London County Council v Farren** [1956] 3 401, CA.

Time for service—

Notice served before commencement of tenancy. **Lower v Sorrell** [1962] 3 1074, CA.

Weekly tenancy—

Month's notice given to quit on 4th May—Subsequent week's notice to quit on 20th April, **Thompson v McCullough** [1947] 1 265, CA.

Notice to be given not less than four weeks before the date on which it is to take effect—

Notice given on Friday, 4th March, for Friday, 1st April—Rent Act 1957, s 16. **Schnabee v Allard** [1966] 3 816, CA.

Written agreement purporting to be a sub-lease—

Sub-term expressed to extend beyond date of expiry of head lease—No reversion left in head tenant—Head tenant not entitled to serve notice to quit—No contractual obligation on so-called sub-lessee to deliver up possession to head tenant. **Milmo v Carreras** [1946] 1 288, CA.

Variation—

Lease. *See* Lease—Variation, *ante*.

Waiver—

Forfeiture. *See* Forfeiture of lease—Waiver of forfeiture, *ante*.Notice to quit. *See* Notice to quit—Waiver, *ante*.Want of repair. *See* Repair—Want of, *ante*.

War damage—

Disclaimer of lease. *See* War damage (Disclaimer of lease).Multiple lease. *See* War damage (Multiple lease).

Warrant for possession—

Procedure before magistrates. *See* Recovery of possession—Procedure before magistrates—Warrant for possession, *ante*.

Warranty—

Fitness of premises—

Legal or physical fitness. *See* Fitness of premises—Legal or physical fitness—Warranty, *ante*.

War-time lease—

Commencement and termination defined with reference to commencement and termination of war—

Certainty of duration. **Swift v Macbean** [1942] 1 126, KBD.Date of termination of European war—Declaration by government that national emergency ended—Notice to quit—Validity—Validation of War-time Leases Act 1944, ss 1, 2—Tenancy Agreements (End of the War in Europe) Order 1945 (S R & O 1945 No 703). **Hawtreys v Beaufort Ltd** [1946] 1 296, KBD.

Option for further term—

Lease for term of years or duration of hostilities, whichever the longer—Lessee's option for further term—Validation of War-Time Leases Act 1944, ss 1, 3(3), 7(3). **M W Investments Ltd v Kilburn Envoy Ltd** [1947] 1 710, CA.

Termination 12 months after date of end of emergency—

Termination also on happening of specified events—Validation of War-Time Leases Act 1944, s 1(1), (2), (3). **Manchester Royal Exchange Ltd v The Manchester Ltd** [1949] 2 1037, CA.

Uncertainty—

Term—Lease to continue until cessation of hostilities—Cessation of hostilities meaning actual day of cease fire order—Whether tenancy void for uncertainty—Whether tenancy within Validation of War—Time Leases Act 1944, s 1. **Eker v Becker** [1946] 1 721, KBD.Term—Termination defined with reference to termination of war—Whether void for uncertainty. **Lace v Chandler** [1944] 1 305, CA.

War-time tenancy—

Creation. *See* Tenancy—Creation—Wartime, *ante*.

Weekly tenancy—

Repair—

Implied covenant. *See* Repair—Implied covenant—Weekly tenancy, *ante*.**LANDS TRIBUNAL**

Appeal to tribunal—

Development value. *See* Town and country planning (Development value—Determination—Appeal to Lands Tribunal).

Case stated—

Contention not pressed before tribunal—

Change of law—Consideration on appeal—Discretion of court. *See* Court of Appeal (Ground of appeal)—Contention not pressed in court of first instance—Discretion of court—Lands Tribunal decision—Change in law after decision and before appeal).Form. *See* Practice—Case stated—Form, *post*.

LANDS TRIBUNAL (cont)

Compensation—

Unconditional offer by acquiring authority—

Discretion as to costs. *See* Costs—Discretion—Claim for compensation—Unconditional offer by acquiring authority, *post*.

Costs—

Compulsory purchase—

Claim for compensation. *See* **Compulsory purchase** (Compensation—Claim—Costs).

Discretion—

Judicial exercise—Determination of development value by Central Land Board—Appeal to Lands Tribunal—Successful party overstating case—Deprived of costs—Hearing fees—Lands Tribunal Act 1949, s 3(5), (6)—Lands Tribunal Rules 1949 (SI 1949 No 2263), r 52. **Wootton v Central Land Board** [1957] 1 441, CA.Order that costs of one party be borne by other party—Claim for compensation—Acquisition of land—Unconditional offer by acquiring authority—Offer rejected—Tribunal rejecting claim for compensation—Order by tribunal that authority pay claimant's costs before date of offer—Jurisdiction to make order—Discretion to be exercised judicially—Special reasons for order to be stated—Lands Tribunal Act 1949, s 3(5)—Land Compensation Act 1961, s 4(1). **Pepys v London Transport Executive** [1975] 1 748, CA.

Costs awarded on county court scale—

Application for increased charges—Time for application—Costs awarded on county court scale 3—Appeal to Court of Appeal—No application for increased charges for a year—Subsequent application for certificate for increased charges—Delay—Effect—County Court Rules 1936, Ord 13, r 5, Ord 47, r 21(4)—Lands Tribunal Rules 1949 (SI 1949 No 2263), r 42(2). **Sandown Park Ltd v Castle (Valuation Officer)** [1955] 2 634, CA.

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Application for discharge or modification of restrictive covenants—

Investigation of title of objectors—Assumption of their title—Determination of facts on which jurisdiction depends—Existence of building scheme—Whether determination effective. **Re Purkiss' Application** [1962] 2 690, CA.

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Consent—

Statutory tribunal—Jurisdiction not conferred by consent without statutory authority—Purchase notice under Town and Country Planning Act 1959, s 39—Counter-notice stating only grounds within s 40(1)(f)—Preliminary point of law raised later by consent—Point of law a ground of objection under s 40(1)(e), but had not been specified in the counter-notice—Tribunal had no jurisdiction to determine point of law, nor had appellate court on appeal from it—Town and Country Planning Act 1959, s 41(2). **Essex County Council v Essex Incorporated Congregational Church Union** [1963] 1 326, HL.

Water rates—

Transfer of jurisdiction from county court—Extent of tribunal's jurisdiction—Lands Tribunal Act 1949, s 1(3)(e). **Sowerby Urban District Council v Stott** [1956] 2 264, CA.

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Case stated—

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- Negligence—
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- Preliminary point of law. *See* **Practice** (Preliminary point of law).

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- Citation. *See* **Practice** (Citation of cases—Reports).
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- List of authorities—
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- Queen's Bench Division. *See* **Practice** (List of authorities—Procedure—Queen's Bench Division).
- Publication—
Company publishing law reports—
Whether a charity. *See* **Charity** (Benefit to community—Development and administration of judge-made law—Law reports).

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- Locus standi. *See* **Practice** (Parties—Law Society).
- Power to require solicitor to produce books for inspection. *See* **Solicitor** (Clients' account—Inspection of books of account, bank pass books, vouchers etc—Law Society's power to require solicitor to produce books for inspection).

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- Commencement. *See* **Shipping** (Commencement of lay days).

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- Computation—
Time lost waiting for berth—
Demurrage. *See* **Shipping** (Demurrage—Time lost waiting for berth—Computation of time).

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- Examiner—
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- Instructor—
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- Motor insurance—
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- Agreement for—
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Test. *See* **Contract** (Repudiation—Test—Agreement for lease).
- Agreement for lease—
Specific performance. *See* **Specific performance** (Lease—Agreement for lease).
- Agreement to purchase. *See* **Landlord and tenant** (Lease—Agreement to purchase lease).
- Agricultural holding. *See* **Agricultural holding**.
- Animal—
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- Assignment—
Landlord and tenant. *See* **Landlord and tenant** (Assignment of lease).
- Sale of land. *See* **Sale of land** (Leasehold interest—Assignment).
- Avoidance—
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- Business premises. *See* **Landlord and tenant** (Business premises).

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- Chattels—
 - Forfeiture—
 - Relief. *See* **Equity** (Forfeiture—Relief—Hiring of chattels—Machines leased to plaintiff).
- Coal mining—
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- Company—
 - Disclaimer of lease—
 - Compulsory winding-up of company. *See* **Company** (Disclaimer of onerous property—Lease).
 - Winding-up—
 - Liability for rent. *See* **Company** (Winding-up—Proof and ranking of claims—Rent).
- Contribution by tenant to Landlord's costs of managing building. *See* **Landlord and tenant** (Contribution by tenant to landlord's costs of managing building).
- Covenant against assignment—
 - Mortgaged property. *See* **Mortgage** (Sale—Leasehold property—Covenant by lessee in lease not to assign).
- Determination of tenancy—
 - Notice to quit. *See* **Landlord and tenant** (Notice to quit).
- Disclaimer of—
 - Compulsory winding-up of company. *See* **Company** (Compulsory winding-up—Disclaimer of onerous property—Lease).
- Encroachment by tenant. *See* **Landlord and tenant** (Encroachment by tenant).
- Enfranchisement. *See* **Landlord and tenant** (Leasehold enfranchisement).
- Execution of lease by limited company. *See* **Landlord and tenant** (Lease—Execution).
- Extent of demise. *See* **Landlord and tenant** (Lease—Extent of demise).
- Fishing rights. *See* **Landlord and tenant** (Lease—Fishing rights).
- Forfeiture—
 - Generally. *See* **Landlord and tenant** (Forfeiture of lease).
 - Relief. *See* **Landlord and tenant** (Relief against forfeiture).
- Generally. *See* **Landlord and tenant** (Lease).
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 - Intent to defraud creditors. *See* **Fraudulent conveyance** (Conveyance of property with intent to defraud creditors).
- Illegal premium. *See* **Rent restriction** (Premium).
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 - Generally. *See* **Landlord and tenant** (Covenant—Implied covenant).
 - Repair. *See* **Landlord and tenant** (Implied covenant to repair).
- Implied grant of lease. *See* **Landlord and tenant** (Implied grant of lease).
- Implied reservation—
 - Right to display advertisements. *See* **Easement** (Implied reservation—Lease—Right to display advertisements).
- Implied term—
 - Contribution to landlord's costs of maintaining building. *See* **Landlord and tenant** (Contribution by tenant to landlord's costs of maintaining building—Implied term).
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- Mortgage of lease—
 - Forfeiture—
 - Relief of mortgagees. *See* **Landlord and tenant** (Relief against forfeiture—Underlessee—Lease mortgaged—Relief of mortgagees).
- Mortgagor's power of leasing. *See* **Mortgage** (Power of leasing).
- Option—
 - Purchase—
 - Freehold reversion—Option separately assigned to mortgagee—Option exercised by mortgagee—Whether mortgagor entitled to conveyance of reversion on redemption. *See* **Mortgage** (Redemption—Lease with option to purchase freehold reversion).
 - Freehold reversion—Overriding interest. *See* **Land registration** (Overriding interest—Rights of person in actual occupation—Option lease for lessee to purchase freehold reversion).
 - Leasehold reversion—Enforcement. *See* **Option** (Option to purchase—Enforcement—Option to purchase leasehold reversion).
 - Tenant's option conferred by lease. *See* **Option** (Option to purchase—Tenant's option conferred by lease).
- Renewal—
 - Generally. *See* **Landlord and tenant** (Renewal of lease—Option).
 - Settled land. *See* **Settlement** (Purchaser dealing in good faith with tenant for life—Protection of purchaser—Agreement for lease with option to renew).
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 - Option to purchase. *See* **Landlord and tenant** (Lease—Reversion).
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 - Construction. *See* **Landlord and tenant** (Renewal of lease—Perpetual right of renewal—Construction).
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 - Proper law. *See* **Conflict of Laws** (Contract—Proper law of contract—Lease of railway rolling stock).
- Renewal—
 - Option to renew. *See* **Landlord and tenant** (Renewal of lease—Option).

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Excess rent. *See* **Income tax** (Profits—Excess rent—Rent payable under a lease).

Rent. *See* **Landlord and tenant** (Rent).

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Repudiation. *See* **Landlord and tenant** (Lease—Repudiation).

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Election between observing unenforceable covenant and surrendering lease. *See* **Restraint of trade by agreement** (Lessor and lessee—Election).

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Income tax—Capital or income. *See* **Income tax** (Capital or income receipts—Surrender of lease).

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Generally. *See* **Landlord and tenant** (Surrender of tenancy).

Lessee's obligation to offer to surrender lease to lessor before asking lessor's consent to assignment—

Registration as land charge. *See* **Land charge** (Estate contract—Option to purchase right of pre-emption or 'other like right'—Absence of money consideration—Lease—Surrender).

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Informal surrender of lease by liquidator—Breach of covenant at time of surrender—Whether provable in liquidation. *See* **Company** (Winding-up—Proof and ranking of claims—Claim for breach of covenant—Covenant to yield up demised premises with full vacant possession—Informal surrender of lease by liquidator).

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Validity against purchaser of land. *See* **Land charge** (Estate contract—Yearly tenancy under written agreement—Undertaking to grant ten-years' lease).

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LEGACY DUTY

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Event occurring after commencement of Finance Act 1949—

Determination of interest—Completion of administration and distribution of estate after 30th July 1949—Finance Act 1949, s 27(2)(b) (e). **Re Cunliffe-Owen (decd)** [1953] 2 196, CA.

Instalments of legacy duty falling due—Ascertainment of residuary estate—Finance Act 1949, s 27(2)(e). **Re Gibbs (decd)** [1951] 2 63, ChD.

Incidence—

Duties on sums paid for duty on gifts free of duty—

Legacy duty on sums paid in respect of estate duty and succession duty—Whether payable by beneficiary or out of residue—Legacy Duty Act 1796, s 21. **Re King** [1942] 2 182, CA.

Foreign duty—

Legacy to foreign national 'free of duty'—Whether foreign duty as well as English duty to be paid out of testator's estate. **Re Norbury** [1939] 2 625, ChD.

Freedom from duty—

Foreign duties. **Re Cunliffe-Owen (decd)** [1951] 2 220, ChD.

Further legacy duty—

Settled legacy of £20,000—Duty payable on death of tenant for life—Payment out of capital of legacy or residue—Finance Act 1947, s 49. **Re Shepherd** [1948] 2 932, ChD.

Legacies expressly given free of duty—

Direction to pay 'death duties (payable in consequence of my death)'—Incidence of legacy duty in respect of legacies not expressed to be free of duty. **Re Borough** [1938] 1 375, ChD.

Settled legacy at discretion of trustees—

Contingent legacy. **Re Fenwick** [1936] 2 1096, ChD.

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Rate of duty—

Assessment—

Legal costs incurred by executor in connection with will. **New South Wales Comr of Stamp Duties v Pearce** [1954] 1 19, PC.

LEGAL AID

Advice and assistance—

Proceedings before magistrates' court—

Advice by solicitor to party to proceedings—Care proceedings in juvenile court—Parent of child—Care proceedings in respect of child—Whether parent of child a 'party to proceedings'—Whether parent entitled to legal advice and assistance—Children and Young Persons Act 1969, s 1—Legal Aid Act 1974, s 2(4). **R v Worthing Justices, ex parte Stevenson** [1976] 2 194, QBD.

Agent—

Foreign agent—

Costs—Taxation. *See* Taxation of costs—Foreign agent, *post*.

Amendment of certificate. *See* Certificate—Amendment, *post*.

Appeal—

Security for costs. *See* Security for costs—Costs of appeal, *post*.

Assisted person's liability to pay costs—

Assessment—

Costs of appeal—Dismissal of assisted plaintiff's appeal against amount of damages for personal injuries awarded—Damages awarded to plaintiff to be taken into account in assessing defendants' costs of the appeal—Assessment of costs by Court of Appeal—Legal Aid and Advice Act 1949, s 2(2)(e)—Legal Aid (General) Regulations 1950 (S I 1950 No 1359), reg 17, as substituted by Legal Aid (General) (Amendment No 1) Regulations 1954 (S I 1954 No 166). **Bloomfield v British Transport Commission** [1960] 2 54, CA.

Postponement of assessment—Legal Aid (General) Regulations 1960 (S I 1960 No 408), reg 18(1), proviso. **W v W (No 3)** [1962] 1 736, Div.

Assisted person unsuccessful litigant—

Application by opponent for costs—Costs in House of Lords. *See* **House of Lords** (Costs—Application for costs and expenses against legally-aided legally-aided party—Application for costs by successful respondent).

Certificate limited to part of issues in action or petition—

Certificate limited to defending claims for ancillary relief in divorce petition—Whether assisted person liable to pay costs of petition—Legal Aid and Advice Act 1949, s 2(2)(e). **Mills v Mills** [1963] 2 237, CA.

Determination of amount of liability—

Time for determination—Trial or hearing of action—Dismissal of action for want of prosecution—Legal aid certificate discharged before dismissal of action—Whether there had been a trial or hearing of action—Whether defendants entitled to costs incurred prior to discharge of assisted person's certificate—Legal Aid and Advice Act 1949, s 2(2)(e)—Legal Aid (General) Regulations 1962 (S I 1962 No 148), reg 18(1). **Cope v United Dairies (London) Ltd** [1963] 2 194, QBD.

Wife assisted person with nil contribution—

Matrimonial home—Property in issue being matrimonial home vested at law in wife alone—Husband claiming beneficial interest on account of work of improvement done by him—Husband awarded some beneficial interest—Costs awarded against wife—Whether award of costs should stand—Legal Aid and Advice Act 1949, s 2(2)(e)—Legal Aid (General) Regulations 1962 (S I 1962 No 148), reg 18(2). **Pettitt v Pettitt** [1968] 1 1053, CA.

LEGAL AID (cont)

Bill of costs—

Form—

Transitional provisions—Work done partly before and partly after 1st January 1961—Composite fee—Divorce—Legal Aid and Advice Act 1949—Rules of Supreme Court (No 3) 1959 (S I 1959 No 1958), Sch 2—Legal Aid (General) (Amendment No 4) Regulations 1960 (S I 1960 No 2369). **Practice Note** [1961] 1 329, Div.

Transitional provisions—Work done partly before and partly after 1st January 1961—Composite fee—Rules of Supreme Court (No 3) 1959 (S I 1959 No 1958), Sch 2—Legal Aid (General) (Amendment No 4) Regulations 1960 (S I 1960 No 2369). **Practice Direction** [1961] 1 64.

Lodgment—

Attendance—Appointment to tax—Divorce Division. **Practice Directions** [1962] 3 465, PDA, [1963] 1 230, PDA.

Care proceedings in juvenile courts—

Person who may be granted legal aid—

Person brought before juvenile court—Parent of child—Care proceedings brought in respect of child—Child in custody and care of parent—Issue between local authority and parent over competence of parent to look after child—Whether parent a 'person...brought before' court—Whether court having power to grant parent legal aid—Children and Young Persons Act 1969, s 1—Legal Aid Act 1974, s 28(3). **R v Worthing Justices, ex parte Stevenson** [1976] 2 194, QBD.

Certificate—

Amendment—

Appeal by husband against maintenance order—Adultery by wife after making of order—Need to inform legal aid committee—Legal Aid (General) Regulations 1950 (S I 1950 No 1359), regs 8(1), 18(3). **Minkley v Minkley** [1953] 1 1176, Div.

Retrospective amendment—Jurisdiction—Civil aid certificate issued for appeal in regard to amount of damages—Transcript of shorthand note of evidence and judgment bespoken by plaintiff's solicitors—Not authorised by certificate—Whether certificate could be amended retrospectively—Legal Aid (General) Regulations 1950 (S I 1950 No 1359), regs 8(1)(a), 14(3)(b). **Wallace v Freeman Heating Co Ltd** [1955] 1 418, QBD.

Ante-dating certificate—

Power of local committee to ante-date—Legal Aid (General) Regulations 1950 (S I 1950 No 1359), regs 2(2), 5(14). **Lacey v W Silk & Son Ltd** [1951] 2 128, KBD.

Certificate limited to obtaining opinion of counsel in regard to contemplated proceedings—

No proceedings taken—Validity of certificate—Legal Aid and Advice Act 1949, s 1(5), (6). **Law Society v Elder** [1956] 2 65, CA.

Responsibilities of counsel. **Hanning v Maitland (No 2)** [1970] 1 812, CA.

Certiorari to quash certificate—

Assisted person unsuccessful litigant—Executors of small estate—Means of executors above limit for legal aid—Area committee looked only to means of widow beneficially interested in estate—Certificate granted in respect of proceedings—Whether certiorari lay to quash certificate—Legal Aid and Advice Act 1949, s 2(1)—Legal Aid (General) Regulations 1962 (S I 1962 No 148), reg 5(5), (11). **R v Area Committee No 9 (North Eastern) Legal Aid Area, ex parte Foxhill Flats (Leeds) Ltd** [1970] 1 1176, QBD.

Chancery Division—

Lodgment of copies in chambers. *See Practice* (Chancery Division—Legal aid certificates—Lodgment of copies in chambers).

Criminal cases—

Grant. *See Criminal cases—Grant, post.*

Discharge—

Assisted person's requiring unreasonable conduct of proceedings causing unjustifiable expense—Solicitor and counsel still acting for assisted person—Discharge under reg 12(3)(b)—Whether that or reg 12(2)(d) applicable—Legal Aid (General) Regulations 1962 (S I 1962 No 148), reg 12(2)(d), 3(b). **R v Area Committee No 14 (London West) Legal Aid Area, ex parte Dhargalkar** [1968] 1 225, CA.

Extension of time for issue of full certificate—

Power of court to extend time—Assessment of contribution after expiration of emergency certificate—Legal Aid (General) Regulations 1950 (S I 1950 No 1359), regs 10(9), 12(1)—RSC Ord 64, r 7. **Ward v Mills** [1953] 2 398, CA.

Power of court to extend time—Issue of certificate more than three months after grant of emergency certificate—Validity—Legal Aid (General) Regulations 1950 (S I 1950 No 1359), regs 10(9), 12(1), 15(9)—RSC Ord 64, r 7. **Greenwood v Sketcher** [1951] 1 750, CA.

Filing—

Time for—Extension of time—Application for—Procedure for obtaining extension—Postal facilities. **Practice Direction** [1969] 2 1140.

Grant—

Matters to be taken into consideration by legal aid committee in determining whether to grant or refuse certificate—Bankruptcy proceedings—Application by trustee in bankruptcy—Legal Aid and Advice Act 1949, s 2(1)—Legal Aid (General) Regulations 1950 (S I 1950 No 1359), reg 4(1), (3). **R v Manchester Legal Aid Committee, ex parte R A Brand & Co Ltd** [1952] 1 480, QBD.

Matters to be taken into consideration by legal aid committee in determining whether to grant or refuse certificate. **R v Area Committee Committee No 1 (London) Legal Aid Area, ex parte Rondel** [1967] 2 419, QBD.

Matters to be taken into consideration by legal aid committee in determining whether to grant or refuse certificate—Responsibilities of committee. **Hanning v Maitland (No 2)** [1970] 1 812, CA.

LEGAL AID (cont)

Certificate (cont)—

Grounds for discharge—

Alteration of circumstances—Failure to inform area committee—Whether such breach of regulations as justified court in discharging certificate—Legal Aid (Assessment of Resources) Regulations 1950 (S I 1950 No 1358), reg 1(2), Sch I, Part I, para 2(1)—Legal Aid (General) Regulations 1950 (S I 1950 No 1359), as amended by Legal Aid (General) (Amendment No 1) Regulations 1954 (S I 1954 No 166), regs 8(5), 11(2A), (4). **Moss v Moss** [1956] 1 291, Div.

False statement made by wife in application for legal aid—Wife's failure to disclose adultery—Whether wife's certificate should be discharged by court—Legal Aid (General) Regulations 1950 (S I 1950 No 1359), reg 11(4). **Nevill v Nevill** (**Lewis** cited) [1959] 1 619, Div.

Inspection—

Procedure. **Practice Note** [1956] 2 416, Div.

Issue of certificate—

Notice to unassisted party of issue of certificate—Failure to serve notice on unassisted party—Effect—Legal Aid (General) Regulations 1950 (S I 1950 No 1359), reg 15(2). **King v T and W Farmiloe Ltd** [1953] 1 614, QBD.

Refusal—

Conclusiveness of legal aid committee's decision—View taken by committee on merits conclusive in absence of fresh evidence—Proceedings—Appeal to House of Lords—Certiorari and mandamus against refusal of certificate not granted—Legal Aid (General) Regulations 1962 (S I 1962 No 148), reg 7(f). **R v Area Committee No 1** (London) **Legal Aid Area, ex parte Rondel** [1967] 2 419, QBD.

Revocation by court—

Charge against assisted person of furnishing false information—Disclosure of information supplied to Law Society and National Assistance Board—Jurisdiction of court—Legal Aid and Advice Act 1949, ss 4(6), 14(1)(a)—Legal Aid (General) Regulations 1950 (S I 1950 No 1359), reg 11(4). **Whipman v Whipman** [1951] 2 228, Div.

Charge against assisted person of furnishing false information—Investigation of allegation that assisted person furnished false information to Law Society—Disclosure of information to court—Whether court should itself investigate the question of discharge or revocation or should adjourn to enable the area committee to consider the matter—Legal Aid and Advice Act 1949, s 14(1)(a)—Legal Aid (General) Regulations 1962 (S I 1962 No 148), reg 12(5)(6). **Neill v Glacier Metal Co Ltd** [1963] 3 477, QBD.

Scope of certificate—

Enforcement proceedings—Civil aid certificate granted to prosecute action to include enforcement proceedings in High Court in respect of judgment obtained—Assisted person obtained judgment for damages against company, which remained unpaid—Petitioned for, and obtained, winding-up order against company—Civil aid certificate covered winding-up proceedings—Legal Aid (General) Regulations 1962 (S I 1962 No 148), reg 6(2). **Re Peretz Co Ltd** [1964] 3 633, ChD.

Matrimonial cause—Certificate to prosecute or defend a suit for divorce—Certificate to enforce order for ancillary relief, costs or damages—Scope of usual form of certificate. **Practice Direction** [1965] 3 732, Div.

Winding-up petition—Certificate for action and 'to enforce any order made therein'—Winding-up petition after judgment obtained. **Re Parker Davies & Hughes Ltd** [1953] 2 1158, ChD.

Certiorari to quash legal aid certificate. *See* Certificate—Certiorari to quash certificate, *ante*.

Charge on property recovered for deficiency of costs—

Enforcement of charge—

Charge for costs on damages recovered—Infant plaintiff—Money paid into court—Balance remitted to county court for plaintiff's benefit—Whether charge enforceable by payment out to Law Society—Legal Aid and Advice Act 1949, s 3(4)—Legal Aid (General) Regulations 1950 (S I 1950 No 1359), reg 19(1), (2)—CCR Ord 16, r 13(4). **Law Society v Rushman** [1955] 2 544, CA.

Duty of Law Society—Law Society bound to enforce charge—Manner of enforcement discretionary—Legal Aid and Advice Act 1949, s 3(4)—Legal Aid (General) Regulations 1971 (S I 1971 No 62), reg 19(2). **Till v Till** [1974] 1 1096, CA.

Nil contribution of assisted person—Whether any enforceable charge—Legal Aid and Advice Act 1949, s 3(4)—Legal Aid (General) Regulations 1950 (S I 1950 No 1359), reg 19(1), (2). **R v Judge Fraser Harrison, ex parte Law Society** [1955] 1 270, QBD.

Exemptions from charge—

Assisted person's dwelling-house—Contract for exchange of dwelling-houses—Assisted person awarded decree of specific performance—No order as to costs except taxation—Maximum contribution paid—Whether Law Society entitled to a charge for remainder on assisted person's dwelling-house—Legal Aid and Advice Act 1949, s 3(4). **Wagg v Law Society** [1957] 2 274, ChD.

Assisted person's dwelling-house—Whether dwelling-house exempt from charge—Legal Aid and Advice Act 1949, s 3(4)—Legal Aid (General) Regulations 1971 (S I 1971 No 62), reg 18(10). **Till v Till** [1974] 1 1096, CA.

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Preserved—Assisted person successfully resisting adverse claim to property—Assisted person not making any claim to declaration or other relief—Whether property 'preserved' for assisted person in proceedings—Legal Aid and Advice Act 1949, s 3(4). **Till v Till** [1974] 1 1096, CA.

Priority of charge—Order for payment of costs—Declaration that plaintiff entitled to share in proceeds of sale of property—Defendant ordered to pay plaintiff's costs of proceedings—Both parties legally aided—Charge on sum preserved by defendant—Whether charge attaching to whole sum or to balance remaining after effect given to court's order to pay plaintiff's costs—Legal Aid and Advice Act 1949, s 3(4). **Cooke v Head** (No 2) [1974] 2 1124, CA.

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Certificate—Discharge—Certificate limited to obtaining transcript of judgment and counsel's opinion as to appeal—Costs incurred by opponent while certificate current—Certificate discharged before appeal heard—Appeal dismissed—Whether costs incurred during currency of certificate should be awarded against assisted person—Legal Aid and Advice Act 1949, ss 1(5), (6), 2(2)(e)—Legal Aid (General) Regulations 1962 (S I 1962 No 148), reg 13(6)(b). *Dugon v Williamson* [1963] 3 25, CA.

Costs payable by unsuccessful assisted person—Adjournment to master in chambers for determination—Legal Aid (General) Regulations 1960 (S I 1960 No 408), reg 18(1), proviso (a). *Blatcher v Heaysman* [1960] 2 721, CA.

Costs payable by unsuccessful assisted person—Sum reasonable for person to pay—Jurisdiction of Court of Appeal—Substitution of own view for trial judge's—Legal Aid and Advice Act 1949, s 2(2)(e)—Legal Aid (General) Regulations 1962 (S I 1962 No 148) reg 18(1), (2), (3). *Gooday v Gooday* [1968] 3 611, CA.

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Assisted person resident abroad—

Costs of attendance at court—Prior approval of Law Society—Legal Aid (General) Regulations 1950 (S I 1950 No 1359), reg 3(4)—Legal Aid (General) (Amendment No 1) Regulations 1954 (S I 1954 No 166), reg 23(1). *Ammar v Ammar* [1954] 2 365, Div.

Right to order against defendant for full costs—Legal Aid and Advice Act 1949, s 1(7)(b). *Starkey v Railway Executive* [1951] 2 902, CA.

Assisted person successful plaintiff—

Right to costs—Legal Aid and Advice Act 1949, s 1(7)(b). *Daley v Diggers Ltd* [1951] 1 116, KBD.

Charge on property recovered for deficiency of costs. *See* **Charge on property recovered for deficiency of costs, ante.**

Compromise—

Costs of giving effect to compromise—Conveyancing matters—Legal Aid and Advice Act 1949, s 1(5). *Re Trusts Affecting 26 Clarendon Villas, Hove* [1955] 3 178, ChD.

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Damages—Costs of prayer for damages not included on legal aid taxation. *Practice Direction* [1967] 3 177, Div.

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Divorce by consent—Legally aided petitioner—Omission of prayer for costs. *See* **Divorce** (Separation—Two year separation—Consent to decree by respondent—Petitioner legally aided—Consent on terms that there be no order as to costs).

Queen's Proctor's intervention—Certificate granted for divorce suit—Whether covering costs of intervention—Legal Aid (General) Regulations 1950 (S I 1950 No 1359), reg 5(2). *Wallis v Wallis (Queen's Proctor showing cause)* [1952] 1 915, Div.

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Wife's costs—Wife's petition for divorce on ground of husband's cruelty—Husband's petition for divorce on ground of wife's adultery with co-respondent—Suits consolidated—Wife in receipt of legal aid covering both suits—Order for security for costs against husband—Husband and wife reconciled and petitions dismissed by consent—Wife's instructions to legal representatives not to ask for order for costs against husband—Wife's solicitor would have applied for costs on her behalf but for her veto—Whether Law Society as guardian of legal aid fund entitled to apply for order for costs against husband—Legal Aid and Advice Act 1949, s 1(7)(b). *Carter v Carter* [1964] 2 968, Div.

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Liability of assisted person. *See* **Assisted person's liability to pay costs, ante.**

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LEGAL AID (cont)**Costs (cont)—****Payment into court—**

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Recovery by legally assisted person of amount less than that paid in—Liability for defendants' costs after date of payment into court—Legal Aid and Advice Act 1949, s 2(2)(e). **Nolan v C & C Marshall** [1954] 1 328, CA.

Set-off—

Assisted person successful defendant—Retention of fund in court pending satisfaction of costs of defendant—Means—Legal Aid and Advice Act 1949, ss 2(2)(e), 3(4)—Legal Aid (General) Regulations 1950 (S I 1950 No 1359), regs 16, 17. **Carr v Boxall** [1960] 1 495, ChD.

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Solicitor's failure to give notice of legal aid certificate—

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Trustee's costs—

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Unassisted person's costs out of legal aid fund. *See* Unassisted person's costs out of legal aid fund, *post*.

Counsel's and solicitors' fees. *See* Taxation of costs—Counsel's and solicitors' fees, *post*.

Criminal cases—**Costs payable to assisted person—**

Sums on account of fees payable to counsel or solicitor and disbursements incurred by solicitor—Fees and disbursements incurred before date of order and remaining payable at date of order—Legal aid order made at conclusion of trial—Whether sums allowable in respect of fees and disbursements incurred before date of order—Legal Aid Act 1974, s 37(2). **R v Tullett** [1976] 2 1032, Crown Ct.

Grant—

Committal proceedings—Complete discretion—Criminal Justice Act 1967, ss 73(2), 74(1), (2). **R v Derby Justices, ex parte Kooner** [1970] 3 399, QBD.

Committal proceedings—Murder—Legal aid should include representation by counsel—Criminal Justice Act 1967, s 74(2). **R v Derby Justices, ex parte Kooner** [1970] 3 399, QBD.

Defence certificate—Nature of right given—Poor Prisoners' Defence Act 1930, s 1(1). **R v Sowden** [1964] 3 770, CCA.

Solicitor and counsel—Serious case—Prisoner charged with serious offence carrying heavy penalty should be given legal aid for representation by solicitor and counsel. **R v Howes** [1964] 2 172, CCA.

Withdrawal of solicitors—Whether fresh certificate for solicitors should be granted—Grant of services of counsel only an emergency measure—Discretion of court—Poor Prisoner's Defence Act 1930 s 1(1), s 3(3). **R v Sowden** [1964] 3 770, CCA.

Offer of legal aid—

Guilty plea—Offer to be made by court where heavy sentence likely, even though accused pleads guilty. **R v Serghiou** [1966] 3 637, CA.

Guilty plea—Offer of legal aid to be made by court where heavy sentence likely, even though accused pleads guilty—Sentence of 30 months marginal—Duty of court to ensure representation where circumstances clearly require careful inquiry. **R v Green** [1968] 2 77, CA.

Guilty plea—Offer to be made by court where heavy sentence likely even though accused pleads guilty—Offer of legal aid, or explanation why legal aid not offered, should be on record of trial court even though accused declines legal aid. **R v Hooper** [1967] 1 766, CA.

Practice—

Appeal—Legal aid order—Legal Aid Act 1974, s 30(7). **Practice Note** [1974] 2 805, CA.

Representation by counsel—

Indictable offence—Legal aid not including representation by counsel except in the case of an indictable offence—Meaning of 'indictable offence'—Whether including offence triable either summarily or on indictment—Legal Aid Act 1974, s 30(2)(a). **R v Guildhall Justices, ex parte Marshall** [1976] 1 767, QBD.

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Trial—

Time when application must be made—Committal for trial to Crown Court—Application to Crown Court for legal aid—Application made at conclusion of trial—Whether court having jurisdiction to entertain application—Legal Aid Act 1974, s 28(7). **R v Tullett** [1976] 2 1032, Crown Ct.

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- Defence certificate—
 - Criminal appeal. *See* **Criminal law** (Appeal—Defence certificate).
- Discharge of certificate. *See* Certificate—Discharge, *ante*.
- Divorce—
 - Costs. *See* Costs—Divorce, *ante*.
 - Generally. *See* **Divorce** (Legal aid).
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 - Assessment of resources—
 - Exclusion of subject-matter of dispute—Divorce—Application by wife for legal aid to defend petition, to cross-petition and to claim maintenance—Alimony pending suit ordered subsequently—Whether alimony taken into account in computing wife's disposable income—Whether maintenance so taken into account where application is to reduce the amount payable—Legal Aid and Advice Act 1949, s 4(3)—Legal Aid (Assessment of Resources) Regulations 1950 (S I 1950 No 1358), reg 2. **Taylor v National Assistance Board** [1957] 3 703, HL.
 - Trustee in bankruptcy—Proposed proceedings by petitioning creditor in name of trustee—Impropriety of joining petitioning creditor as co-applicant. **Re Crossley (a debtor)** [1954] 3 296, ChD.
- Expert evidence—
 - Taxation of costs. *See* Taxation of costs—Expert evidence, *post*.
- Expert's fee. *See* Taxation of costs—Expert's fee, *post*.
- Extension of time for issue of full certificate. *See* Certificate—Extension of time for issue of full certificate, *ante*.
- False information—
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- Legal aid committee—
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 - Unassisted person's costs out of legal aid fund. *See* Unassisted person's costs out of legal aid fund, *post*.
- Matrimonial home—
 - Registration of land charge—
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 - Exercise of discretion—
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 - Substantial justice between parties—Matrimonial proceedings—Legal Aid and Advice Act 1949, s 1(7)(b). **Corbett v Corbett (otherwise Ashley)** (No 2) [1970] 2 654, Div.
 - Successful plaintiff in action for fraud—All parties legally aided—Judgment against defendant husband and wife but wife not dishonest—Contributions of defendants different—Costs awarded in proportion to and subject to limit of contributions—Legal Aid and Advice Act 1949, ss 1(7)(b), 2(2)(e). **Blatcher v Heaysman** [1960] 2 721, CA.
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 - Factors to be considered—Change in circumstances—Variation of order against legally assisted person—Legal Aid (General) Regulations 1950 (S I 1950 No 1359), reg 17(4), as substituted by Legal Aid (General) (Amendment No 1) Regulations 1954 (S I 1954 No 166). **Corrick v Northam** [1956] 2 174, QBD.

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Payment into court—

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Taxation of costs. *See* Taxation of costs—Payment into court, *post*.

Queen's Proctor's intervention—

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Remittance of action to county court unless security given by plaintiff for defendant's costs—Legal aid certificate issued to plaintiff—Jurisdiction to remit action—County Courts Act 1934, s 46(1), (2). **Burton v Holdsworth** [1951] 2 381, CA.

Appeal in bankruptcy proceedings—

Application for dispensation from payment—Certificate authorising bringing of appeal—Whether bankrupt automatically entitled to a dispensation—Bankruptcy Rules 1952 (S I 1952 No 2113), r 129. **Re Traviss (a bankrupt), ex parte The Bankrupt v The Official Receiver** [1971] 2 1257, ChD.

Costs of appeal—Bankrupt's appeal. **Re Cohen (a bankrupt), ex parte The Bankrupt v Trustee of the Property of the Bankrupt, ex parte Trustee of the Property of the Bankrupt v The Bankrupt** [1961] 1 646, CA.

Costs of appeal—

Circumstances in which assisted person ordered to give security for costs. **Wyld v Silver (No 2)** [1962] 2 809, CA.

Plaintiff not assisted person when order first made—Subsequent grant of emergency certificate—Effect on order—Legal Aid and Advice Act 1949, s 12(2)(b)(ii). **Conway v George Wimpey & Co Ltd** [1951] 1 56, CA.

'Special circumstance'—Plaintiff 'assisted person' in court of first instance—Substantial contribution then ordered—RSC, Ord 58, r 15(2). **Bampton v Cook** [1954] 1 457, CA.

Discretion—

Exercise—Substantial justice between parties—Matrimonial proceedings—Legal Aid and Advice Act 1949, s 1(7)(b). **Corbett v Corbett (otherwise Ashley)(No 2)** [1970] 2 654, Div.

Matrimonial causes—

Right of wife to apply for security for costs—Application by wife in divorce proceedings—Husband an 'assisted person'—Legal Aid and Advice Act 1949, s 12(2)(b)(iii). **Vincent v Vincent** [1952] 2 978, Div. **Evans v Evans** [1953] 1 70, CA.

Wife respondent to divorce petition an assisted person—Respondent's answer and cross-prayer abandoned at hearing in view of respondent's evidence—Whether respondent entitled to order for costs, the husband having given security. **Mines v Mines** [1957] 1 667, Div.

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Relevance of fact plaintiff assisted person—Relevance as to quantum. **Friedmann v Austay (London) Ltd** [1954] 1 594, ChD.

Right of defendant to security—Whether fact that plaintiff assisted person disentitling defendant to order for security—Legal Aid and Advice Act 1949, s 1(7)(b). **Jackson v John Dickinson & Co (Bolton) Ltd** [1952] 1 104, CA.

Right of assisted person to order—

Matrimonial cause—Amount of order—Wife's case conducted by salaried solicitor—Wife poor person when application first made—Legal Aid (General) Regulations 1950 (S I 1950 No 1359), reg 5(10). **Wigley v Wigley** [1950] 2 1218, CA.

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Counsel's and solicitor's fees—

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Country solicitor attending trial in London—Leading counsel advising attendance. **McCullie v Butler** [1961] 2 554, QBD.

Disallowance—Advice on evidence before delivery of defence—Attendance of country solicitor at consultation in London—Conference to advise plaintiff to agree to settlement—Legal Aid and Advice Act 1949, Sch III, para 4(1). **Warman v Barclays Bank Ltd** [1953] 2 1575, ChD.

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Taxation of costs (cont)—

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Additional fee—Case outside London or large assize centres—Right of assisted litigant to select counsel from appropriate panel—Fair and reasonable remuneration—Legal Aid and Advice Act 1949, s 6(4), Sch III, para 4(1). *Self v Self* [1954] 2 550, Div.

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Divorce petition heard outside London—Undefended suit—Normal fee for counsel reduced on taxation—No special facts or circumstances stated by taxing officer—Legal Aid and Advice Act 1949, Sch III, para 4(1). *Eaves v Eaves and Powell* [1955] 3 849, Div.

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Appeal from decision of taxing master—Procedure—Legal Aid in Criminal Proceedings (Fees and Expenses) Regulations 1968 (S I 1968 No 1230), reg 10. *Practice Direction* [1968] 3 869.

Crown Court—Review of decision of taxing authority—Procedure—Legal Aid in Criminal Proceedings (Fees and Expenses) Regulations 1968 (S I 1968 No 1230), reg 9. *Practice Direction* [1972] 2 984.

Review of decision of taxing authority—Jūdicature fee—Payment—Legal Aid in Criminal Proceedings (Fees and Expenses) Regulations 1968 (S I 1968 No 1230), reg 9. *Practice Direction* [1971] 1 576.

Review of decision of taxing authority—Procedure—Legal Aid in Criminal Proceedings (Fees and Expenses) Regulations 1968 (S I 1968 No 1230), reg 9. *Practice Direction* [1968] 3 870.

Direction for taxation—

Effect—Interlocutory proceedings—Costs of interlocutory application reserved to trial judge—Direction by trial judge for legal aid taxation—No specific order as to costs of interlocutory applications—Costs reserved inter partes—Effect of direction for taxation—Legal Aid and Advice Act 1949, Sch III, para 4(1)—Legal Aid (General) Regulations 1950 (S I 1950 No 1359), reg 18(3)(as amended by S I 1954 No 166). *Paice v Paice* [1957] 2 721, Div.

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Solicitor's fee for attending hearing—Party and party allowance. *See Divorce* (Costs—Taxation—Party and party taxation—Counsel's brief fee—Solicitors' fee for attending the hearing).

Duty of master on taxation—

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Solicitor and client costs—Disallowance, or partial disallowance, of items allowed in full on party and party taxation—Disbursements not previously authorised—Amounts received in full by legal aid fund from defendants—Legal Aid and Advice Act 1949, s 12(1)—Legal Aid (General) Regulations 1950 (S I 1950 No 1359), reg 14(4),(5),(6), as amended by Legal Aid (General)(Amendment No 1) Regulations 1954 (S I 1954 No 166), and Legal Aid (General) (Amendment No 2) Regulations 1955 (S I 1955 No 1829). *Ullah v Hall Line Ltd* [1960] 3 488, QBD.

Further allowance—

Full value of work done—Costs representing full value of work done allowed on taxation as between party and party—No further allowance on solicitor-and-client basis—Legal Aid and Advice Act 1949, Sch III, para 4(1). *Lyon v Lyon* [1952] 2 831, CA.

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Registration of ancillary order—Registration in magistrates' court of order for ancillary relief obtained in matrimonial cause. *Practice Note* [1959] 1 576, Div.

Negotiations between solicitors and insurers—

Personal injuries case—Costs of negotiations between plaintiff's solicitors and defendant's insurers recoverable against fund—Scottish solicitors acting as agents not solicitors within Legal Aid and Advice Act 1949—Proper method of taxing charges incurred by Scottish solicitors—Country solicitors' fee for attending trial in London—Costs of review of taxation—Legal Aid and Advice Act 1949, Sch 111, para 2(3). *McCullie v Butler* [1961] 2 554, QBD.

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Duty of court to make order for taxation—Legal Aid and Advice Act 1949, ss 6(5), 6(6), Sch III—Legal Aid (General) Regulations 1950 (S I 1950 No 1359), reg 18(3). *Page v Page, Metcalf v Wells* [1953] 1 626, CA.

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Settlement by parties during trial—No term in settlement as to costs—Legal Aid (General) Regulations 1950 (S I 1950 No 1359), reg 18(3). **Metcalf v Wells** [1953] 1 626, CA.

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Acceptance of money paid into court—Notice of acceptance—Taxation on notice of acceptance—Legal Aid and Advice Act 1949, Sch III—RSC Ord 62, r 10(2). **Practice Direction** [1971] 1 576.

Principles to be applied—

More generous allowance than in party and party taxation—Legal Aid and Advice Act 1949, Sch III, para 4(1)—RSC Ord 65, r 27(29). **Gibbs v Gibbs** [1952] 1 942, Div.

Solicitor's duty to assisted client—Advice of counsel—What costs properly incurred—Divorce—Inquiry by respondent wife for evidence of husband's adultery where not alleged by her in answer—Legal Aid and Advice Act 1949, s 1(7)(a), Sch III, para 4(1)—Legal Aid (General) Regulations 1950 (S I 1950 No 1359), reg 18(3), as amended by Legal Aid (General) (Amendment No 1) Regulations 1954 (S I 1954 No 166), reg 27. **Francis v Francis and Dickerson** [1955] 3 836, Div.

Procedure—

Chancery Division—Ex parte application—Written request for order for taxation—Papers to be lodged. **Practice Direction** [1969] 2 1127, ChD.

Dispensing with taxation—Agreement regarding costs to be paid to assisted person—Acceptance by solicitor and counsel in full satisfaction of work done—Duty of taxing master or registrar to fix amount to be paid—Legal Aid (General) Regulations 1971 (S I 1971 No 62). **Practice Direction** [1972] 2 624.

Review of taxation—

Costs of review. **McCullie v Butler** [1961] 2 554, QBD.

Jurisdiction of court to order review—Application stated to be by plaintiff's solicitor—Legal Aid and Advice Act 1949, Sch III, para 4(1)—Legal Aid (General) Regulations 1950 (S I 1950 No 1359), reg 18(3)(b), as substituted by S I 1954 No 166, reg 27. **Sutton v Sears** [1959] 3 345, QBD.

Jurisdiction of court to order review—Assisted person not financially interested and not having obtained authority of area committee to apply for review—Legal Aid and Advice Act 1949, Sch III, para 4(1)—Legal Aid (General) Regulations 1950 (S I 1950 No 1359), reg 18(3)(b), as substituted by S I 1954 No 166. **Hammond v Hammond** [1957] 3 16, Div.

Scale of costs—

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Attendance fee for petitioner in divorce suit—Petitioner's evidence disbelieved by trial judge—Expenses of attendance at court—Whether vexatious and improper charge—Legal Aid and Advice Act 1949, Sch III, para 4(1). **Bock v Bock** [1955] 2 793, Div.

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Unassisted person's costs out of legal aid fund—

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Costs incurred in proceedings between him and party receiving legal aid—Proceedings—Appeal—Order by appellate court—Whether 'proceedings' including proceedings in court below—Whether appellate court entitled to order payment of costs incurred in connection with proceedings in court below—Legal Aid Act 1964, s 1(1). **Shiloh Spinners Ltd v Harding (No 2)** [1973] 1 966, HL.

Incurred by—Agreement by insurance company to pay unassisted person's costs—No agreement by unassisted party's solicitors not to look to him for payment of costs—Whether costs 'incurred by' unassisted party—Legal Aid Act 1964, s 1(1). **Davies v Taylor (No 2)** [1973] 1 959, HL.

Incurred by—Unassisted party member of Automobile Association—Association undertaking proceedings on behalf of unassisted party and paying solicitors—Whether costs 'incurred by' unassisted party—Legal Aid Act 1964, s 1(1). **Lewis v Averay (No 2)** [1973] 2 229, CA.

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Unassisted person's costs out of legal aid fund (cont)—

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No order to be made in favour of unassisted party—Divorce proceedings—Petition by impecunious wife—Unsuccessful petition—Practice of divorce courts not to make order for costs against impecunious wife—Statutory discretion as to costs—Wife legally aided with nil contribution—Whether proceedings in which apart from Act order would have been made against wife—Whether court precluded from making order for payment to husband of costs out of legal aid fund—Supreme Court of Judicature (Consolidation) Act 1925, s 50—Legal Aid Act 1964, s 1(4). **Stewart v Stewart** [1974] 2 795, CA.

Just and equitable—

Circumstances surrounding grant of certificate irrelevant—Legal Aid Act 1964, s 1(2). **Hanning v Maitland (No 2)** [1970] 1 812, CA.

Divorce proceedings—Unsuccessful petition by wife—Petition containing false and scandalous allegations—Wife legally aided—Decree awarded to husband on answer—Parties found equally to blame for breakdown of marriage in subsequent ancillary proceedings—Husband ordered to pay costs of ancillary proceedings—Whether just and equitable that husband should be awarded costs of divorce proceedings out of legal aid fund—Legal Aid Act 1964, s 1(2). **Stewart v Stewart** [1974] 2 795, CA.

Divorce proceedings—Unsuccessful petition by wife—Husband's costs—Wife's petition for divorce dismissed—Wife legally aided with a nil contribution—Husband an unassisted person—Application by husband at hearing for his costs out of legal aid fund—No order for costs made against wife—Whether making of order for husband's costs out of legal aid fund just and equitable—Legal Aid Act 1964, ss 1(2), (3)(b), (4), 6(3)—Matrimonial Causes Rules 1957 (S I 1957 No 619), rr 4(4), 17(8). **Nowotnik v Nowotnik (Hyatt intervening)** [1965] 3 167, CA.

Financial position of unassisted party—Relevance—Appeal to Court of Appeal—Fact that he has vast financial resources not of itself bar to application for costs—Unassisted party an insurance company—Legal Aid Act 1964, s 1(2). **General Accident Fire and Life Assurance Corpn Ltd v Foster** [1972] 3 877, CA.

Infant's custody—Appeal by mother from order of magistrates' court giving custody to father—Prospects of success of appeal small—Father's hypothetical contribution to legal aid fund would have exceeded his costs of appeal if he had been an assisted party—Whether just and equitable that an order for payment of his costs out of the legal aid fund should be made—Legal Aid Act 1964, s 1(2). **Re SL (infants)** [1967] 3 538, ChD.

Leapfrog appeal—Appeal direct to House of Lords from High Court on point of law of general public importance—Legal aid granted to appellant in connection with appeal—Appeal dismissed—Costs incurred by respondent—Whether just and equitable that order for payment of costs out of legal aid fund be made—Legal Aid Act 1964, s 1(1)(2). **O'Brien v Robinson (No 2)** [1973] 1 969, HL.

Merits of proceedings—Court entitled to consider merits of proceedings by assisted party—Court entitled to consider course of events after legal aid certificate granted—Appeal by assisted party—Appeal a device for winning more time to avoid payment—Spurious defence put forward by assisted party—Legal aid enabling assisted party to pursue appeal—Unassisted party incurring costs as a result of grant of legal aid—Legal Aid Act 1964, s 1(2). **General Accident Fire and Life Assurance Corpn Ltd v Foster** [1972] 3 877, CA.

Order for payment if (and only if) court satisfied that it is just and equitable in all the circumstances—Discretion—Scope of discretion—Circumstances justifying order—Whether fact that unassisted party successful alone sufficient to justify an order—Legal Aid Act 1964, s 1(2). **Davies v Taylor (No 2)** [1973] 1 959, HL.

Refusal of legal aid—Unassisted party alleging legal aid unreasonably refused—Whether relevant in considering whether in force—Duration and equitable to make order—Legal Aid Act 1964, s 1(2). **Lewis v Averay (No 2)** [1973] 2 229, CA.

Successful appeal to Court of Appeal against decision in favour of assisted party—Onus of proving that it is just and equitable that order should be made—Onus on unassisted party—Evidence that successful unassisted party of limited means—Whether evidence sufficient to discharge onus—Legal Aid Act 1964, s 1(2). **Clifford v Walker** [1972] 2 806, CA.

Successful appeal to Court of Appeal against decision in favour of assisted party—Whether just and equitable that order for payment of costs out of legal aid fund should be made—Legal Aid Act 1964, s 1(2). **Saunders v Anglia Building Society (No 2)** [1971] 1 243, HL.

Unassisted party bringing action on himself—Legal Aid Act 1964, s 1(2). **Hanning v Maitland (No 2)** [1970] 1 812, CA.

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Appeal against refusal of leave to implement collusive agreement with a view to divorce—Appeal by wife—Husband an assisted person—Appeal allowed—Husband not a person against whom an order for costs could be made apart from Act—Wife not entitled to costs out of legal aid fund—Legal Aid Act 1964, s 1(4). **Gosling v Gosling** [1967] 2 510, CA.

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Unassisted person's costs out of legal aid fund (cont)—

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Variation of maintenance order—Unassisted husband's appeal against order of magistrates varying maintenance order and making attachment of earnings order—Whether order for costs would be made against assisted wife—Legal Aid Act 1964, s 1(2), (4). *Povey v Povey* [1970] 3 612, Div.

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No severe financial hardship—Costs of appeal, but not of defence, granted out of legal aid fund—No need to show severe financial hardship as regards costs of appeal—Whether application to court should be necessary in a plain case—Legal Aid Act 1964, s 1(1), (3)(b). *Parker v Thompson* [1966] 3 786, CA.

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Belief of parents that marriage valid—

Child born after ceremony of marriage between parents—One parent reasonably believing marriage valid—Declaration of legitimacy—Legitimacy Act 1959, s 2—Matrimonial Causes Act 1950, s 17. *Sheward v Attorney-General* [1964] 2 324, Div.

Objective test whether either parent reasonably believed that marriage was valid—Legitimacy Act 1959, s 2(1). *Hawkins v Attorney-General* [1966] 1 392, Div.

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Declaration of legitimacy—

Costs—

Failure of petition—Costs of Attorney-General and interveners out of estate. *Cleave v Attorney-General* (Headley, Channon and Barclays Bank Ltd, intervening) [1952] 2 283, Prob.

Jurisdiction—

Declaration of legitimacy of uncle—Whether 'ancestor'—Whether jurisdiction to make declaration—Legitimacy Act 1926, s 2(1)—RSC Ord 25, r 5, Ord 34, r 1. *Knowles v Attorney-General* [1950] 2 6, Div.

Legitimacy of person other than petitioner—Whether court has jurisdiction to make a declaration of the legitimacy of some person other than the petitioner—Whether a declaration on a bare claim for it should be made, assuming that there were jurisdiction—Supreme Court of Judicature (Consolidation) Act 1925, s 21 (b)—Matrimonial Causes Act 1965, s 39(1)—RSC Ord 15, r 16. *Aldrich v Attorney-General* (Rogers intervening) [1968] 1 345, Prob.

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Setting aside—Remarriage of petitioner—Birth of child of second marriage—Effect on child's legitimacy of decree absolute being set aside. **Wiseman v Wiseman** [1953] 1 601, CA.

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Children of second polygamous marriage in England—

Second marriage recognised as valid by law of husband's domicile—Husband domiciled in Pakistan—First marriage in Pakistan—Second marriage to Englishwoman after coming to England—Second marriage whilst first marriage subsisting—Second marriage valid by Pakistani law—Children recognised as legitimate by Pakistani law—Whether children legitimate by English law. **Hashmi v Hashmi** [1971] 3 1253, Assizes.

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Nature of presumption—

Duration of presumption—Conception after decree nisi—Husband and wife living apart—Presumption in favour of conception before decree absolute. **Knowles v Knowles** [1962] 1 659, Div.

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Evidence of non-access—Admissibility—Separation deed. **Stafford v Kidd** [1936] 3 1023, KBD, **Ettenfield v Ettenfield** [1940] 1 293, CA.

Evidence of non-access—plaintiffs for evidence of non-access—Maintenance order with no provision for non-cohabitation—Whether sufficient to rebut presumption. **Bowen v Norman** [1938] 2 776, KBD.

Evidence of non-access—Sufficiency—Whether evidence tendered sufficient. **Cotton v Cotton** [1954] 2 105, CA.

Evidence of use of contraceptives—Whether sufficient to rebut presumption. **W v W** [1953] 2 1013, Div.

Statements by mother during lifetime—Statements by natural father—Admissibility—Matrimonial Causes Act 1950, s 32(1) (2). **Re Jenion (decd)** [1952] 1 1228, CA.

Statement in will suggesting child illegitimate. **Re Hamer's Estate** [1937] 1 130, ChD.

Relevant presumption—

Mother twice married—Child born within nine months of termination of first marriage by death of husband—Second marriage of mother before birth of child—Paternity of child. **Re Overbury (decd)** [1954] 3 308, ChD.

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LEGITIMATED PERSON

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LEGITIMATION

Belief of parents in validity of marriage—

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Meaning of fraud—Conscious and deliberate dishonesty by means of which the declaration was obtained—Requirement that party alleging fraud particularise charge—Whether fraud having to be proved before case reopened—Legitimacy Declaration Act 1858, s 8. **Amphill Peerage Case** [1976] 2 411, HL.

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Child born before annulment of mother's first marriage for incapacity—

Whether deemed to be legitimate child of first marriage—Legitimacy Act 1926, s 1(2)—Law Reform (Miscellaneous Provisions) Act 1949 s 4(1). **Re Adams (decd)** [1951] 1 1037, ChD.

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Presumptive issue of dissolved marriage—Rebutting evidence—Marriage of mother and putative father—Custody prayed in divorce petition by second husband—Declaration of legitimacy—Supreme Court of Judicature (Consolidation) Act 1925, s 188—Legitimacy Act 1926, ss 1, 2. **Maturin (by her guardian) v Attorney-General (Maturin and Stone by her guardian cited)** [1938] 2 214, Div.

Domicile of father at date of marriage—

Evidence—Statements made by deceased father to petitioner—Admissibility—Legitimacy Act 1926, s 1(1). **Scappaticci v Attorney-General** [1955] 1 193, Div.Father domiciled at child's birth in foreign country in which legitimation by subsequent marriage was permitted by law—Whether child legitimated—Legitimacy Act 1926, s 8(1). **Re Hurll** [1952] 2 322, ChD.

Exception where one parent married to third person at date of birth of illegitimate person—

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Practice—

Hearing of petition in camera—

Infants' petitions—Application for hearing in camera—Fact that petitioners were infants did not given them greater rights than those of an adult litigant—Deterrence of litigant by prospect of publicity of trial not a ground for ordering hearing in private. **B (otherwise P) v Attorney-General** [1965] 3 253, Div.Power of court to order hearing in camera—Discretion—Exercise of discretion—Factors to be considered—Domestic and Appellate Proceedings (Restriction of Publicity) Act 1968, s 2. **Barritt v Attorney-General** [1971] 3 1183, Div.

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Special power of appointment given by will—Will before and appointment after legitimation—'Disposition'—Legitimacy Act 1926, ss 3(1), 10(2), 11. **Re Hoff** [1942] 1 547, ChD.**LESOTHO**

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Refugee claiming immunity by virtue of international convention—Whether outside own country as result of events before 1st January 1951—Convention Relating to the Status of Refugees 1951, art 1—Aliens Control Act (Basutoland)(No 16 of 1966), s 38(1). **Molefi v Legal Adviser** [1970] 3 724, PC.

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Positive manifestation of intention to accede—Letter to United Nations after independence adhering to treaties, pending review of commitments, subject to reciprocity. **Molefi v Legal Adviser** [1970] 3 724, PC.**LETTER**

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Jurisdiction—Proceedings for recovery of possession of land—Monthly tenancy determined before date of protection order—Action for recovery of possession of premises—All proceedings for recovery of possession of land stayed pending investigation when protection order made—Interim adjustment order extending debtor's occupation of premises—No extension permissible, as debtor already trespasser before date of protection order—'Tenant'—Liabilities (War-Time Adjustment) Act 1941, s 3(2), (5)—Liabilities (War-Time Adjustment) Act 1944, ss 6, 21, 22. *Re Liabilities (War-Time Adjustment) Acts 1941 and 1944, Re Affairs of Alsop* [1945] 2 43, CA.

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Mortgages—Mortgage deed—Variation—Power of court to reopen past payments—Liabilities (War-Time Adjustment) Act 1941, s 7(3)(a), as amended by Liabilities (War-Time Adjustment) Act 1944, s 7(1). *Re Ginger* [1948] 1 18, CA.

Reduction of debt—Landlord a judgment creditor for rent—Inland Revenue a creditor for Sched A tax—Application by debtor for reduction of judgment debt by amount of Sch A income tax—Jurisdiction of court—Liabilities (War-Time Adjustment) Act 1941, s 4(1). *Re Affairs of Farquhar* [1943] 2 781, CA.

Variation of order—Order by consent—Application to vary on ground of mistake—Jurisdiction of court—Liabilities (War-Time Adjustment) Act 1941. *Re Affairs of Elstein* [1945] 1 272, CA.

Order in favour of assignee of lease—

Effect on liability for rent of original lessee—Liabilities (War-Time Adjustment) Act 1947, s 12(1). *House Property and Investment Co Ltd v Benardout* [1947] 2 753, KBD.

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Proceedings to enforce covenant—Discretion of court—'Lettable value'—Development of shopping centre arrested—Liabilities (War-Time Adjustment) Act 1941, s 6—Liabilities (War-Time Adjustment) Act 1944, s 6. *Re Davey* [1947] 1 90, CA.

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Dispute—Procedure—Proper course to appeal against order and not to ask for variation—Liabilities (War-Time Adjustment) Act 1941, s 10(2). *Re D S Smith* [1943] 2 740, CA.

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Petition for compulsory winding-up of company—Protection order made two days before petition due to be heard—Jurisdiction to entertain petition—Liabilities (War-Time Adjustment) Act 1941, s 3(2). *Re R W Johnson Ltd* [1942] 1 175, ChD.

Practice—

Preliminary hearing to be ex parte—Notice given to creditor by registrar of county court—Appearance of creditor's solicitor at hearing—Whether irregularity such as to vitiate proceedings—Liabilities (War-Time Adjustment) Act 1941—Liabilities (War-Time Adjustment) Rules 1942 (S R & O 1942 No 1302), rr 12(1), 14, 16, 20—22—Liabilities (War-Time Adjustment) Rules 1943 (S R & O 1943 No 1336). *Re Liabilities (War-Time Adjustment) Act 1941, Re Affairs of Evans and Evans* [1944] 1 348, CA.

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LIABILITY INSURANCE

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LIBEL AND SLANDER

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LIBEL AND SLANDER (cont)**Costs—****Slander of woman—**

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Liability to be sued or indicted. **Triplex Safety Glass Co Ltd v Lancegaye Safety Glass** (1934) Ltd [1939] 2 613, CA.

Onus of proof—

Likelihood of breach of peace—Privilege—Libel Act 1843, ss 4, 5. **R v Wicks** [1936] 1 384, CCA.

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Unreasonable award—Injury to reputation and grief at publication—Equating incommensurables—Scale of values applicable for physical injuries not to be disregarded. **McCarey v Associated Newspapers Ltd** [1964] 3 947, CA.

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Vindication of plaintiff's character—Judgment in suit—Judge sitting without jury—Plaintiff's character vindicated by judgment—Whether judge should take vindication into account in assessing damages. **Rook v Fairrie** [1941] 1 297, CA.

Vindication of plaintiff's character—Judge sitting without jury—Right to award heavy damages—Judge not disentitled to award heavy damages because in judgment he expresses opinion of libel. **Bull v Vazquez** [1947] 1 334, CA.

Vindication of plaintiff's character—Reduction of damages—Vindication by judgment in suit—Judge sitting without jury—Whether vindication of plaintiff's reputation by judgment in suit a ground for reducing damages. **Associated Newspapers Ltd v Dingle** [1962] 2 737, HL.

Conduct of defendant—

Plaintiff's feelings—No withdrawal of libel or apology—Conduct of defendant taken into account, although exemplary or punitive damages not to be awarded—Damages not confined to pecuniary damage—Whether permissible to take into account defendant's conduct in assessing damages. **Fielding v Variety Inc** [1967] 2 497, CA.

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Contemporaneous publication of same libel—Previous publication in privileged Parliamentary papers—Subsequent publication with additional actionable defamatory material by defendant newspaper—Whether ground for mitigating damages. **Associated Newspapers Ltd v Dingle** [1962] 2 737, HL.

Reputation—Established bad reputation only taken into account in mitigation—Prior publication of same libel not evidence of such reputation. **Associated Newspapers Ltd v Dingle** [1962] 2 737, HL.

Reputation—Evidence of general bad reputation—Previous convictions—Relevant previous convictions of criminal offences admissible. **Goody v Odhams Press Ltd** [1966] 3 369, CA.

Reputation—Evidence of reputation plaintiff ought to have—Evidence of general bad reputation only admissible in mitigation of damages—Evidence of specific instances of misconduct designed to show character plaintiff ought to have in public estimation inadmissible. **Plato Films Ltd v Speidel** [1961] 1 876, HL.

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Dismissal from employment—Statement by employer that servant dismissed—Plea that words meaning servant had been guilty of some discreditable conduct—Whether words capable of defamatory meaning—Statement by employer that servant dismissed. *Morris v Sandess Universal Products* [1954] 1 47, CA.

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Deliberate act—Newspaper article—Direction to jury—Punitive damages only if publication of defamatory matter was a deliberate act calculated to make profit out of publishing something known to be false or without caring whether it was true or false—Course of criminal conduct falsely alleged—Justification not pleaded and no direct evidence of motive for publication. *Manson v Associated Newspapers Ltd* [1965] 2 954, QBD.

Publication in profitable newspaper—Fact of publication of defamatory matter in profitable newspaper not sufficient of itself to justify punitive damages—Unreasonable award—Appeal—New trial. *Broadway Approvals Ltd v Odhams Press Ltd* [1965] 2 523, CA.

What must be proved—Necessity to show knowledge that what was done was against law and decision to persist with it because prospects of material advantage outweighed prospects of material loss—Unnecessary to show defendant had made arithmetical calculation that profit would exceed loss. *Cassell & Co Ltd v Broome* [1972] 1 801, HL.

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Punishment for wrongdoing—Distinction applicable to damages for libel and also in tort generally—Damages not recoverable by way of punishment for wrongdoing. *McCarey v Associated Newspapers Ltd* [1964] 3 947, CA.

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Direction to jury—Direction that exemplary damages to be awarded 'if, but only if' proposed compensatory damages insufficient to punish defendant—Direction to jury that exemplary damages to be additional to compensatory damages—Whether sufficient. *Cassell & Co Ltd v Broome* [1972] 1 801, HL.

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Award of single sum—Degrees of blameworthiness—One defendant more blameworthy than other—No necessity to split damages between defendants according to blameworthiness—Sum to be that appropriate for least blameworthy. *Cassell & Co Ltd v Broome* [1972] 1 801, HL.

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Facts relied on—

Existence at date of publication—Facts relied on to support plea must be facts existing at date of publication—Particulars pleaded in support of defence of fair comment included events occurring after publication of alleged libel—Particulars struck out. *Cohen v Daily Telegraph Ltd* [1968] 2 407, CA.

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Fair comment (cont)—

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Statement of facts in libel—Need for facts on which comment made to be stated in alleged libel—Article criticising conduct of newspaper—Proof of truth of facts stated in particulars. **Kemsley v Foot** [1952] 1 501, HL.

Honest expression of opinion—

Honesty of comment—Criticism of dramatic work—Misstatements in criticism—Criticism contained in letter to newspaper—False name and address. **Lyon and Lyon v Daily Telegraph Ltd** [1943] 2 316, CA.

Personal imputation—Defence available against personal imputation—Test is whether an honest expression of genuine opinion. **Slim v Daily Telegraph Ltd** [1968] 1 497, CA.

Test to be applied—Defence available even though comment exaggerated, obstinate or prejudiced. **Silkin v Beaverbrook Newspapers Ltd** [1958] 2 516, QBD.

Truth—Relevance—Plea of justification of defamatory statements of fact on which comment based—Plea of justification failing—Whether honest expression of opinion actionable if untrue. **Broadway Approvals Ltd v Odhams Press Ltd** [1965] 2 523, CA.

Malice—

Evidence—Newspaper publishing company—Factors that can or cannot be evidence of malice—One department of defendant company ignorant of activities of another—Advertisement in similar form to that criticised by editorial department of large newspaper accepted by advertising department—Editing of reporter's report—Amendments and omissions—Failure to retract or apologise and persistence in plea of justification. **Broadway Approvals Ltd v Odhams Press Ltd** [1965] 2 523, CA.

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Public benefit—

Burden of proof—Publication for public benefit—Whether it was necessary to show that to publish the words was for the public benefit—Defamation Act 1912-1948 (No 32 of 1912); s 7. **Jones v Skelton** [1963] 3 952, PC.

Truth of facts commented on—

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Identification of plaintiff as person defamed—

Ascertainable class—

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Evidence—

Extrinsic evidence—Article in newspaper—Nothing in article itself pointing to plaintiff—Inference that article referred to plaintiff based on extrinsic evidence—Whether article could constitute libel on plaintiff. **Morgan v Odhams Press Ltd** [1970] 2 544, CA.

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Person of same name as plaintiff—True statement about existing person of same name—Whether referable also to plaintiff. **Newstead v London Express Newspaper Ltd** [1939] 4 319, CA.

Practice—

Statements made after publication of libel—Statements made at meetings—Anonymous telephone communications—Whether admissible as evidence that published libel referred to plaintiff. **Jozwiak v Sadek** [1954] 1 3, QBD.

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No extrinsic evidence to support innuendo—Innuendo meaning allegedly implicit in ordinary meaning—Whether defendants entitled to ruling whether words capable of bearing innuendo meaning—Newspaper report that police fraud squad inquiring into company's affairs, and naming chairman—Admission that words defamatory in ordinary meaning—Innuendo that chairman guilty of fraud—Whether words capable of imputing guilt of fraud as distinct from suspicion—Pleading innuendoes—RSC Ord 19, r 6(2). **Lewis v Daily Telegraph Ltd**, [1963] 2 151, HL.

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Innuendo (cont)—

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Defamatory inferences from words in their natural and ordinary meaning pleaded—Effect of pleading particular inferences—Whether plaintiffs entitled to select particular imputations—Whether plaintiffs confined to particular inferences pleaded. **Slim v Daily Telegraph Ltd** [1968] 1 497, CA.

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Practice—

Actual words of statement—Plaintiff relying solely on actual words of statement alleged to be defamatory—No facts or matters relied on in support—Whether plaintiff entitled to plead innuendo—RSC Ord 19, r 6(2). **Loughans v Odhams Press Ltd** [1962] 1 404, CA.

Innuendo must be supported by extrinsic facts—Meaning of innuendo—True and false innuendoes—Extrinsic fact needed to support extended meaning alleged by true innuendo—Interpretation of words not properly a subject of innuendo—Particulars to be pleaded of facts supporting true innuendo—Striking out innuendo where unsupported by extrinsic facts—RSC Ord 19, r 6(2). **Grubb v Bristol United Press Ltd** [1962] 2 380, CA.

Similar articles about others in same newspaper—Other articles exposing malpractices and dishonesty of other people—Innuendo attributing consequential like character to article in question—Whether prior articles about others relevant. **Wheeler v Somerfield** [1966] 2 305, CA.

Reference to plaintiff—

Identity—Previous statements by persons other than defendant about 'Mr X'—Statement in alleged libel that plaintiff was 'Mr X'—Previous statements by others not expressly or implicitly adopted or repeated in statement sued on—Innuendo—Plaintiff not entitled by pleading innuendoes to make defendant responsible for statements made by others. **Astaire v Campling** [1965] 3 666, CA.

Knowledge of special facts—Newspaper article—Nothing in article itself pointing to plaintiff—Extrinsic evidence of special facts indicating that article referred to plaintiff—Whether extrinsic evidence admissible to import meaning that article referred to plaintiff—Knowledge of special facts limited to a few readers—Discrepancies between story in article and facts relating to plaintiff—Whether readers with special knowledge could reasonably understand article referred to plaintiff. **Morgan v Odhams Press Ltd** [1971] 2 1156, HL.

Words and illustrations—

Juxtaposition of photograph and text—Picture of plaintiff as outdoor photographer—Facing picture of naked woman—Text explaining that for payment customer could have photograph like that of naked woman—Allegation that juxtaposition of illustrations and text implied plaintiff dealt in indecent pictures—Whether pictures and text capable of defamatory meaning. **Garbett v Hazell, Watson & Viney Ltd** [1943] 2 359, CA.

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Malice—Interrogatories as to defendants' sources of information or grounds of belief—RSC Ord 31, r 1A. **Adams v Sunday Pictorial Newspapers (1920) Ltd** [1951] 1 865, CA.

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Defence of fair comment—Interrogatory to writer of article as to identity of informant—Writer paid servant of newspaper. **Lawson v Odhams Press Ltd** [1948] 2 717, CA.

Source of information—

Annual reference book. **Georgius v Oxford University Press (delegates)** [1949] 1 342, CA.

Joint tortfeasors—

Costs—

Judgment—Damages of scheme—Minimum halfpenny—Action against author, publishers, and printers of book—Settlement with printers on payment of £500 damages some months prior to hearing—Action continued against author and publishers—Payment into court of forty shillings by publishers—No payment in by author—Verdict for plaintiff for halfpenny damages—Whether plaintiff entitled to judgment—Order as to costs—RSC, Ord 82, r 4(2). **Dering v Uris** [1964] 2 660, QBD.

Release or covenant not to sue—

Implied term—Defamation action settled against second and third defendants (publishers and printers)—No express reservation of rights against first defendant (author)—Whether agreement not to sue or release of all three defendants. **Gardiner v Moore** [1966] 1 365, QBD.

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Release or covenant not to sue (cont)—

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Newspaper report of issue of writ alleging conspiracy—Particulars of justification repeating fact of issue of writ—Whether sufficient to support justification. **Cadam v Beaverbrook Newspapers Ltd** [1959] 1 453, CA.

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Intervention—Jury returning verdict before conclusion of defence—Plaintiff intending to give evidence in rebuttal of justification—Need for ruling by judge whether such evidence should be permitted—Whether jury entitled to intervene. **Beevis v Dawson** [1956] 3 837, CA.

Partial justification—

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Substantial justification—

Pleading—Reliance by defendant on substantial justification—Necessary to plead substantial justification if sought to rely on it—Defamation Act 1952, s 5. **Moore v News of the World Ltd** [1972] 1 915, CA.Malicious falsehood. *See* **Malicious falsehood**.

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Claim based on natural and ordinary meaning of words—No allegation that words used in defamatory sense other than ordinary meaning—Desirability of pleading innuendo setting out alleged defamatory meaning. **S and K Holdings Ltd v Throgmorton Publications Ltd** [1972] 3 497, CA.Claim based on natural and ordinary meaning of words—No allegation that words used in defamatory sense other than ordinary meaning—Desirability of setting out particulars of alleged defamatory meaning—Uncertainty as to meaning attributable to words complained of—Whether necessary that particulars of defamatory meaning should be pleaded—Whether order for particulars should be made. **Allsop v Church of England Newspaper Ltd** [1972] 2 26, CA.Claim based on natural and ordinary meaning of words—Words complained of bearing different possible meanings—Necessity of pleading particulars of defamatory meaning alleged. **DDSA Pharmaceuticals Ltd v Times Newspapers Ltd** [1972] 3 417, CA.

Fair comment—

General plea—Particulars of facts on which plea based—Plaintiff entitled to particulars. **Cunningham-Howie v F W Dimbleby & Sons** [1950] 2 882, CA.Particulars of defence—Fact and comment—Particulars of facts relied on—Defendant raising general plea of fair comment—Defendant not required to particularise which words complained of are fact and which are comment—Defendant required to give particulars of the facts supporting the plea—RSC Ord 82, r 3(2), applicable only to rolled-up plea and not to a general plea of fair comment. **Lord v Sunday Telegraph Ltd** [1970] 3 504, CA.Rolled-up plea—Particulars of facts relied on. **Tudor-Hart v British Union for the Abolition of Vivisection** [1937] 4 475, CA.Innuendo. *See* **Innuendo**—Particulars, *ante*.

Justification—

Fair comment—Particulars of words not complained of in statement of claim—Single publication not severable into parts—Natural and ordinary meaning of words relied on—Jury entitled to see whole publication—Defendant entitled to plead justification or fair comment as to whole publication—Long article in journal alleging that directors of company guilty of improper accountancy practices—Seventh paragraph of article referring to one director's previous involvement in accounting controversies when chairman of another company—Statement of claim complaining of whole article except seventh paragraph—Particulars of defence justifying seventh paragraph admissible. **S and K Holdings Ltd v Throgmorton Publications Ltd** [1972] 3 497, CA.Giving of particulars—Whether before or after discovery—RSC Ord 19, rr 4, 27. **Goldschmidt v Constable & Co** [1937] 4 293, CA.Order for full particulars—No rule that particulars of facts and matters relied on should always be ordered—Charges sufficiently specific—No general order for particulars—RSC Ord 19, r 6. **Marks v Wilson-Boyd** [1939] 2 605, CA.

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Particulars (cont)—

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Letters alleged to be defamatory—

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Material facts—

Reference to plaintiff. Plaintiff not referred to by name on description other than nationality. **Bruce v Odhams Press Ltd** [1936] 1 287, CA.

Passages alleged to be defamatory—

Need to specify passages—Newspaper article—Parts only of article capable of being defamatory of plaintiffs—Statement of claim alleging that defendants had published 'an article' which seriously injured plaintiffs in their reputation—Copy of complete article delivered with statement of claim—Statement of claim defective. **DDSA Pharmaceuticals Ltd v Times Newspapers Ltd** [1972] 3 417, CA.

Publication of alleged libel—

Date, time and place of publication—Necessary for plaintiff to set out in pleading with reasonable certainty words complained of—Duty to give sufficient particulars to ensure he has proper case—Letters alleged to be defamatory—Plaintiff ignorant of contents—Defendant entitled to particulars including date, time and place of publication of letters. **Collins v Jones** [1955] 2 145, CA.

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Trade union—Libel against union—Right of union to sue—Allegation of 'rigging' a ballot. **Willis v Brooks** [1947] 1 191, KBD.

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Defence—Amendment to plead justification, at a late stage—Amendment allowed because in interests of justice—Any hardship to plaintiffs compensatable by increased damages if plea failed—Due diligence exercised by defendants in placing plea on the record. **Associated Leisure Ltd v Agreement Newspapers Ltd** [1970] 2 754, CA.

Leave—Appeal against order giving leave—Test to be applied in determining appeal—Striking out of amended plea only in plain and obvious cases. **Cadam v Beaverbrook Newspapers Ltd** [1959] 1 453, CA.

Mitigation of damages—

Character of plaintiff—Evidence in mitigation of damages—Plea of justification—Intention of defendant to adduce evidence as to character of plaintiff—Issues of fact not arising out of preceding pleadings—RSC Ord 19, r 15. **Plato Films Ltd v Speidel** [1961] 1 876, HL.

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Preliminary point of law—

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Absolute privilege—

Tribunal recognised by law—Benchers of Inn of Court—Initiation of proceedings—Communication to Bar Council—Alleged libel contained in letters of complaint against Queen's Counsel addressed to secretary of Bar Council—No complaint made to Benchers of Inn of Court—Whether Benchers a tribunal recognised by law—Whether letters initiation of proceedings before Benchers—Whether protected by absolute privilege. **Lincoln v Daniels** [1961] 3 740, CA.

Communications between officials of foreign government—

Communications made in England—Official communications on state matters—Government in exile in London—Letter from state prosecutor to office of head of state—Letter containing defamatory allegations against plaintiff—Plaintiff a citizen of foreign state—Whether letter protected by absolute privilege. **Szalatnay-Stacho v Fink** [1946] 2 231, CA.

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Disciplinary committee of Law Society—Proceedings before committee—Judicial character of proceedings—Whether proceedings absolutely privileged—Solicitors Act 1957, s 46. **Addis v Crocker** [1959] 2 773, QBD.

Interruption—Application to court by interrupter—Newspaper report of interruption—Whether application made in course of judicial proceedings—Whether reports of interruption privileged—Law of Libel Amendment Act 1888, s 3. **Farmer v Hyde** [1937] 1 773, CA.

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Assistant Commissioner's report on chief officer of Metropolitan Sub-Division—Whether report absolutely privileged. **Merricks v Nott-Bower** [1964] 1 717, CA.

Proceedings in Parliament—

Communication to member of Parliament within precincts of Parliament—Publication not connected with proceedings of Parliament—Contempt of court—Breach of injunction against repetition of libel. **Rivlin v Bilainkin** [1953] 1 534, QBD.

Evidence of words spoken in Parliament in support of claim—Evidence of malice—Words complained of spoken by member of Parliament in television interview—Defence of fair comment in good faith and without malice—Evidence of words spoken by defendant in Parliament adduced in order to prove malice—Evidence inadmissible. **Church of Scientology of California v Johnson-Smith** [1972] 1 378, QBD.

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Communication to labour exchange—Letter from employer—Letter sent in response to request from labour exchange for information concerning former employee—Letter defamatory and malicious—Whether absolutely privileged—Unemployment Insurance Act 1920, s 11—Unemployment Insurance Act 1935, s 44. **Mason v Brewis Bros Ltd** [1938] 2 420, KBD.

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Allowing notice to remain on wall—Club premises—Proprietary club—Notice containing defamatory statement posted on club wall—Proprietors of club permitting notice to remain on wall—Whether notice published by proprietors. **Byrne v Deane** [1937] 2 204, CA.

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Agreement not to offer to supply goods in response to an invitation to tender until after discussions with other persons invited to tender—Privilege ordinarily attributable to communications between persons in a particular relationship not lost merely by absence of duty or common interest to make the particular communication that was made—Statement that plaintiff not conversant with normal business ethics—Communicated by letter to mutual friend who had introduced plaintiff to the writer with a view to business. **Angel v H H Bushell & Co Ltd** [1967] 1 1018, QBD.

Bank—Cheque marked 'not sufficient'—Sufficient funds in account—Duty of bank to make communication. **Davidson v Barclays Bank Ltd** [1940] 1 316, KBD.

Belief of defendant—Defamatory communication about conduct of third party—Genuine but mistaken belief by defendant that recipient of communication has interest in receiving it—Whether belief sufficient to attract qualified privilege. **Beach v Fresson** [1971] 2 854, QBD.

Clerical staff—Publication to clerical staff for purpose of preparing document—Interest of employer and employee in publication—Publication to intended recipient never made—Whether publication to clerical staff protected by original privilege—Whether publication must be made to intended recipient to attach ancillary privilege. **Bryanston Finance Ltd v de Vries** [1975] 2 609, CA.

Member of Parliament—Allegation of improper conduct by public official—Communication to member of Parliament seeking interview with Minister—Whether member of Parliament having sufficient interest in communication. **R v Rule** [1937] 2 772, CCA.

Member of Parliament—Complaint by constituent concerning conduct of solicitor—Letters sent by member to Law Society and Lord Chancellor setting out details of complaint—Duty or interest of member in passing on complaint—Interest of Lord Chancellor in complaint—Whether publication of letters protected by qualified privilege. **Beach v Fresson** [1971] 2 854, QBD.

Official organ of body or association—Notice published in organ—Racehorse trainer—Licence withdrawn—Publication in 'Racing Calendar'. **Russell v Duke of Norfolk** [1949] 1 109, CA.

Presence of bystanders—Statement to person having interest in hearing it—Words spoken in presence of bystanders—Words overheard by bystanders—Bystanders having no interest or duty in respect of statement—Whether occasion privileged. **White v J & F Stone Ltd** [1939] 3 507, CA.

Privileged occasion—Report to commanding officer—Allegation that serviceman had failed to pay debt—Communication by creditor to commanding officer—Interest of commanding officer in payment of debt. **v Bampton** [1943] 1 661, KBD.

Protection of common interest—Alleged breach of copyright—Letter by owner of copyright to firms selling publication in which copyright infringed—Whether letter written on privileged occasion. **Frank Smythson Ltd v G A Cramp & Sons Ltd and Surrey Manufacturing Co** [1943] 1 322, CA.

Ship's log—Entry in log—Statutory duty to make entry when seaman left behind—Entry stating seaman had deserted the ship—Master not informed that seaman in hospital—Absence of malice. **Moore v Canadian Pacific Steamship Co** [1945] 1 128, KBD.

LIBEL AND SLANDER (cont)

Qualified privilege (cont)—

Duty and interest (cont)—

Statutory duty—Common interest—No common interest to make and receive communication—Report of committee to borough council—Publication of report in public libraries for perusal of ratepayers and others—Metropolis Management Amendment Act 1856, s 9. *De Buse v McCarty and Stepney Borough Council* [1942] 1 19, CA.

Malice avoiding privilege—

Anger—Libel published unnecessarily and in anger—Statement that plaintiff not conversant with normal business ethics—Statement communicated by letter to mutual friend who had introduced plaintiff to defendant with a view to business—Anger at sales not being forthcoming. *Angel v H H Bushell & Co Ltd* [1967] 1 1018, QBD.

Employer and workman—Workman suffering from dermatitis caused by conditions of employment—Certificate of disablement—Application for compensation—Letter to company's insurers disclaiming liability—Letter containing defamatory statements of workman's uncleanness and exposure of fellow workers to risk of infection—Appeal to medical referee—Appeal out of time—Purported appointment of medical referee by registrar—Repetition of certain defamatory statements in insurers' letter to medical referee—Privilege—Proceedings before medical referee not judicial in character—Workmen's Compensation (Medical Referees in England and Wales) Regulations 1932 (SR & O 1932 No 960), regs 25, 26, 27, 30. *Smith v National Meter Co Ltd* [1945] 2 35, KBD.

Evidence of malice—Motive—Financial considerations—Expression of opinion—Opinion actuated by financial considerations—Right of defence against written attack—Procedure at trial. *Turner (otherwise Robertson) v Metro-Goldwyn-Mayer Pictures* [1950] 1 449, HL.

Gross and unreasoning prejudice—Honest belief of defendant in truth of defamatory allegation—Honest belief induced by gross and unreasoning prejudice—Gross and unreasoning prejudice not itself amounting to malice—Honest belief in truth of defamatory allegation inconsistent with malice. *Horrocks v Lowe* [1974] 1 662, HL.

Joint publication—Malice of one defendant—Partners—Malice found against only one of the partners—Act performed by another partner without malice—Liability of partner against whom malice found—Partnership Act 1890, s 10. *Meekins v Henson* [1962] 1 899, QBD.

Joint publication—Principal and agent—Malice of principal—Liability of agent—Letter written by assistant secretary on instructions of committee—Malice found against some committee members only—No malice found against assistant secretary—Effect of malice of some members on privilege of innocent members of committee—Effect of malice of principal on privilege of agent. *Egger v Viscount Chelmsford* [1964] 3 406, CA.

Joint publication—Trustees of friendly society—Malice of one trustee—Effect on qualified privilege of other trustees—Whether privilege of trustees avoided by malice of one. *Longdon-Griffiths v Smith* [1950] 2 662, KBD.

Solicitor—Admission of negligence by client—Evidence of malice—Plaintiff involved in motor accident—Plaintiff not to blame for accident—Conduct of litigation in hands of insurance company—Company's solicitor admitting plaintiff's negligence cause of accident—Action for libel against solicitor—Evidence that solicitor actuated by malice. *Groom v Crocker* [1937] 3 844, KBD, [1938] 2 394, CA.

Parliamentary proceedings—

Fair and honest report—Selective report in newspaper—'Parliamentary sketch'—Sketch consisting of selective report of part of proceedings considered by reporter to be of public interest—Sketch giving reporter's impression of that part of proceedings—Sketch privileged if fair and honest presentation of what took place—Debate in House of Lords—Sketch giving prominence to one speech strongly critical of the plaintiff—Sketch also referring to rebuttal of criticism in another speech. *Cook v Alexander* [1973] 3 1037, CA.

Newspaper comment—Parliamentary papers—Report of select committee—Comment on proceedings and report of committee—Parliamentary Papers Act 1840, s 3. *Dingle v Associated Newspapers Ltd* [1960] 1 294, QBD.

Privilege subject to explanation or contradiction—

Refusal to publish explanation or contradiction—Letter requesting full apology—Request not setting out words of statement to be published by way of explanation—Whether a request to publish 'letter or statement by way of explanation or contradiction'—Defamation Act 1952, s 7(2). *Khan v Ahmed* [1957] 2 385, QBD.

Protection of common interest—

Examination—Allegation of cheating—Common interest of examinees—Words alleging cheating in examination—Statement made by invigilator to remainder of examinees. *Bridgman v Stockdale* [1953] 1 1166, QBD.

Public interest—

Duty to communicate information to public—Communication to press—Simultaneous termination of their engagements at London theatre by four artistes privately giving contractual month's notice—Unusual happening likely to curtail run of successful play—Coincidence of notice with alleged wish to transfer another play to that theatre—Letter to artistes by employing impresario deploring their simultaneous notice—Communication of letter to national press—Alleged defamation of artistes' theatrical agents and other plaintiffs who were not the artistes—Whether letter subject of qualified privilege. *London Artists Ltd v Littler* [1968] 1 1075, QBD.

Election—Address by candidate—Statement by candidate in election address—Whether subject of qualified privilege. *Braddock v Bevins* [1948] 1 450, CA.

Election—Limitation of privilege at elections—Statement in election address—Whether plea of qualified privilege barred by statute—Defamation Act 1952, s 10. *Plummer v Charman* [1962] 3 823, CA.

LIBEL AND SLANDER (cont)

Qualified privilege (cont)—

Public meeting—

Meeting for furtherance or discussion of matter of public concern—Report of meeting in newspaper—Meeting organised by Pakistani students to honour distinguished statesman—Meeting open to anyone—Whether public meeting—Defamation Act 1952, s 7(1), Sch, para 9. *Khan v Ahmed* [1957] 2 385, QBD.

Report of judicial proceedings—

Accuracy—Newspaper report—Criminal proceedings—Charges of theft and of taking car without owner's consent—Charge of theft withdrawn—Reporter through inattention failing to realise charge of theft withdrawn—Plaintiffs convicted of taking without consent—Report referring to conviction for 'theft'. *Mitchell v Hirst, Kidd & Rennie Ltd* [1936] 3 872, KBD.

Advocate's speech—Verification—Newspaper report—Whether duty to verify advocate's statement. *Burnett & Hallamshire Fuel Ltd v Sheffield Telegraph & Star Ltd* [1960] 2 157, Assizes.

Foreign proceedings—Confession—Report of criminal trial abroad of British subject in which he confessed to crimes in England, including murder of which he had previously been acquitted by English court—Whether report protected by qualified privilege—Scope of such privilege—Whether extending to report of statement concerning murdered man having been father of child of the murderer's wife. *Webb v Times Publishing Co Ltd* [1960] 2 789, QBD.

Report of notice issued by public authority for information of public—

Police notice—Broadcast—Circular letter by auctioneers to other auctioneers—Theft of pigs at auction—Television flash arranged through chief officer of police containing offer of reward by auctioneers—Whether matter of public concern and for public benefit—Defamation Act 1952, ss 7, 9, Sch, para 12. *Boston v WS Bagshaw & Sons* [1966] 2 906, CA.

Severance of causes of action—

Actions for libel and slander—

Statements that plaintiff was referred to in alleged libel—Statements pleaded as slander—Application for severance of the two causes of action on ground statements irrelevant and inadmissible on issue of libel—Application refused—Statements relevant on question of damages for libel. *Bridgmont v Associated Newspapers Ltd* [1951] 2 285, CA.

Slander actionable per se—

Imputation of criminal offence—

Conviction—Allegation that plaintiff has been convicted—Words not putting defamed person in jeopardy of prosecution. *Gray v Jones* [1939] 1 798, KBD.

Imputation of unchastity against woman—

Lesbianism—Words spoken imputing lesbianism—Whether imputation of unchastity—Slander of Women Act 1891. *Kerr v Kennedy* [1942] 1 412, KBD.

Official, professional or business reputation of plaintiff—

Employee—Plaintiff employed by Jew—Statement by defendant to employer that plaintiff a 'Jew hater'—Whether words spoken of plaintiff in relation to his business—Special damage. *De Stempel v Dunkels* [1938] 1 238, CA.

Office or duty—Firewatcher—Firewatcher entrusted with keys of house—Allegation that keys improperly used—No proof of special damage—Whether firewatching an office or a duty. *Cleghorn v Sadler* [1945] 1 544, KBD.

Party enjoined—Limited liability company—Defamatory statements relating to company's business—Limited liability company—Whether slander of company actionable at suit of company without proof of actual damage. *D & L Caterers Ltd and Jackson v D'Anjou* [1945] 1 563, CA.

Professional examination—Allegation that examinee had cheated—Examination for professional qualification—Inference that examinee unable to qualify without cheating—Whether words spoken of examinee in way of profession. *Bridgman v Stockdale* [1953] 1 1166, QBD.

Publication at a time when plaintiff pursuing that profession—Slander published while plaintiff on indefinite leave—Whether pursuing profession of army officer at time of slander. *Bull v Vazquez* [1947] 1 334, CA.

Solicitor—Acting in non-professional capacity—Testimonial by solicitor for friend—Statement that testimonial worthless—Whether statement spoken of solicitor in way of his professional reputation. *Hopwood v Muirson* [1945] 1 453, CA.

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Statement to be approved by judge in chambers—RSC Ord 22, r 2(4). *Liebrich v Cassell & Co Ltd* [1956] 1 577, QBD.

Trade union—

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Verdict—

Separate slanders—

Words spoken on different occasions—Single verdict—Validity—Defendants' counsel at trial not asking for separate verdicts. *Barber v Pigden* [1937] 1 115, CA.

LICENCE

- Account—
 - Inspection—Scope of obligation. *See* **Account** (Inspection—Scope of obligation—Licence agreement).
- Accounts—
 - Inspection by licensor—
 - Principle of settled accounts—Relevance—Licence to manufacture and sell road-making specialities—Payment of royalties—Provision for licensor to inspect accounts—Request to inspect after agreement terminated and receipt given for payment of final royalty—Licensors entitled to ask for inspection—Principle of settled account not applicable. **Anglo-American Asphalt Co Ltd v Crowley Russell & Co Ltd** [1945] 2 324, ChD.
- Advertisement. *See* **Town and country planning** (Advertisement—Licence)
- Aerodrome. *See* **Aerodrome** (Licence).
- Agricultural worker—
 - Licence to occupy farm cottage. *See* Licence to occupy premises—Agricultural worker, *post*.
- Betting office. *See* **Gaming** (Betting—Licensed betting office—Application for licence).
- Building licence. *See* **Building control** (Building licence).
- Cab licence—
 - Revocation—
 - Certiorari to quash revocation. *See* **Certiorari** (Jurisdiction—Licensing committee—Cab licence—Decision of Commissioner of Metropolitan Police to **Certiorari**)
- Carrier's licence—
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- Charity—
 - Licence to occupy premises. *See* Licence to occupy premises—Charity, *post*.
- Cinema. *See* **Cinema** (Licence).
- Consideration for grant of licence—
 - Income tax—
 - Capital or income. *See* **Income tax** (Capital or income receipts—Licence).
- Construction of bridge over highway. *See* **Highway** (Restriction on construction of bridges over highway—Need for licence from highway authority).
- Contractual—
 - Licence to occupy land. *See* Licence to occupy land—Contractual licence, *post*.
- Copyright. *See* **Copyright** (Licence).
- Dealing in securities—
 - Dealing without licence. *See* **Criminal law** (Dealing in securities without a licence).
- Deserted wife's right to occupy matrimonial home. *See* Licence to occupy premises—Deserted wife's right to occupy matrimonial home, *post*.
- Dock workers—
 - Licence to employ registered dock workers—
 - Refusal of licence—Compensation for refusal—Application for licence—Withdrawal of application before decision—Application for licence to employ five workers—Licensing authority notifying applicants that they proposed to issue licence subject to condition that 13 workers employed—Appeal to Minister—Applicants deciding to close down business—Applicants notifying Minister before decision on appeal that they were withdrawing application—Minister subsequently notifying applicants that application refused—Whether Minister having jurisdiction to refuse application after withdrawal—Whether applicants entitled to compensation for refusal—Docks and Harbours Act 1966, ss 4(1), 13(1). **Boal Quay Wharfingers Ltd v King's Lynn Conservancy Board** [1971] 3 597, CA.
 - Refusal of licence—Compensation for refusal—Licence granted with conditions—Whether grant of licence with conditions a refusal of licence—Docks and Harbours Act 1966, s 13. **Limb & Co (Stevedores) (a firm) v British Transport Docks Board** [1971] 1 828, QBD.
- Drainage—
 - Mutual licences—
 - Unilateral revocation. *See* Mutual licences—Unilateral revocation—Drainage to and from adjoining properties, *post*.
- Driving licence—
 - Disqualification. *See* **Road traffic** (Disqualification for holding licence).
 - Generally. *See* **Road traffic** (Driving licence).
- Entry—
 - Revocation of licence—
 - Licence to enter premises—Police officers approaching front door of house through unlocked garden gate—Revocation of oral licence to enter house—Reasonable time to leave. **Robson v Hallett** [1967] 2 407, QBD.
- Free travel pass—
 - Whether contract or licence. *See* **Carriers** (Negligence—Exclusion of liability—Passengers—Free pass—Contractual animus, not merely a licence).
- Funfair. *See* **Entertainment** (Funfair—Obligation to obtain licence).
- Game. *See* **Game** (Licence).
- Gaming—
 - Application for licence. *See* **Gaming** (Licensing of premises—Application for licence).
 - Generally. *See* **Gaming** (Gaming licence).
- Hackney carriage. *See* **Road traffic** (Hackney carriage—Licence).
- Heavy goods vehicle driver's licence. *See* **Road traffic** (Heavy goods vehicle driver's licence).
- Horse-racing—
 - Trainer's licence—
 - Refusal of licence to woman on ground of sex—Monopoly control—Whether contrary to public policy arbitrarily to exclude from work—Whether horse-racing a vocation within Sex Disqualification (Removal) Act 1919, s 1. **Nagle v Feilden** [1966] 1 689, CA.

LICENCE (cont)

Import licence—

Duty to obtain—

Person on whom duty rests—Prohibition against import without licence—Buyer's duty to obtain licence—Customs (Consolidation) Act 1876, s 284—Import, Export and Customs Powers (Defence) Act 1939, ss 1(1), 3(1), 9(2)—Anthrax Order 1935 (S R & O 1935 No 164)—Import of Goods (Control) Order, 1940 (S R & O 1940 No 873). *Mitchell Cotts & Co (Middle East) Ltd v Hairco Ltd* [1943] 2 552, CA.

Inspection of accounts by licensor. *See* Accounts—Inspection by licensor, *ante*.

Intoxicating liquor. *See* Licensing.

Irrevocable licence. *See* Licence to occupy land—Contractual licence—Irrevocable licence, *post*.

Land—

Licence to enter—

Trespass—Defence. *See* Trespass to land (Defence—Leave and licence).

Licence to occupy—

Generally. *See* Licence to occupy land, *post*.

Trespass. *See* Trespass to land (Right to maintain action).

Licence to assign lease granted—

Covenant against assignment without consent—

No legal assignment. *See* Landlord and tenant (Covenant against assignment without consent—Licence to assign grant by landlord—No legal assignment).

Licence to be on land—

Revocation—

Interlocutory injunction. *See* Injunction (Interlocutory—Trespass—Revocation of licence).

Licence to occupy land—

Agreement whereby person granted licence to occupy land for use as agricultural land—

Agreement to take effect with necessary modifications as agreement for tenancy from year to year. *See* Agricultural holding (Tenancy—Agreement whereby person granted licence to occupy land for use as agricultural land).

Agricultural worker—

Suspended order for possession—Costs. *See* Agriculture (Agricultural worker—Tied cottage—Possession—Suspended order for possession—Costs).

Contractual licence—

Enforcement of rights by licensor—Equitable remedies. *London Borough of Hounslow v Twickenham Garden Developments Ltd* [1970] 3 326, ChD.

Irrevocable licence—Implied term that licensor would not revoke licence during term of contract. *London Borough of Hounslow v Twickenham Garden Developments Ltd* [1970] 3 326, ChD.

Nature of licence. *London Borough of Hounslow v Twickenham Garden Developments Ltd* [1970] 3 326, ChD.

Rights of licensee against third parties—Constructive trust—Agreement in writing by licensor to allow licensee to occupy premises rent free for life or so long as she may desire—Undertaking by licensee to maintain premises—Sale of licensor's interest to third party—Agreement for sale stated to be subject to agreement with licensee—Agreement for sale constituting constructive trust in favour of licensee—Third party bound by licensee's interest under trust. *Binions v Evans* [1972] 2 70, CA.

Deserted wife in occupation of matrimonial home—

Notice of licence. *See* Husband and wife (Deserted wife's right to remain in matrimonial home—Notice of licence to occupy).

Estoppel as between licensor and licensee—

Ceylon. *See* Ceylon (Estoppel—Licensor and licensee—Licence granted by deputy Viharadhipathi—Implied renewal of licence after death of Viharadhipathi—Implied resumption of possession).

Grant—

Value added tax—Exemptions. *See* Value added tax (Exemptions—Grant of right over or Licence to occupy land).

Licence distinguished from tenancy—

Agreement granting licence to occupy and use, as agricultural land, land forming part of airfield—Grantor a government department—Part of land under requisition, and rest owned, by grantor—Agreement containing covenants usual in tenancy agreements, but expressly excluding creation of tenancy—Same protection conferred on grantee as tenant of agricultural holding, other than conditional security of tenure—Whether tenancy created. *Finbow v Air Ministry* [1963] 2 647, QBD.

Occupation in return for services—

Whether licence or tenancy. *See* Rent restriction (Rent—Exclusive use of part of house given in return for services).

Summary proceedings for possession—

Availability of proceedings. *See* Land (Summary proceedings for possession—Land occupied by persons who entered into or remained in occupation without licence or consent—Availability of summary procedure).

Whether notice to quit needed. *See* Landlord and tenant (Notice to quit—Tenancy at will—

Licence to occupy premises—Whether any notice needed).

Licence to occupy premises—

Agricultural worker—

Exclusive possession of farm cottage—Recovery of possession—Suspension of order—Protection from Eviction Act 1964, ss 1(6), 2(4). *Crane v Morris* [1965] 3 77, CA.

Charity—

Old people's home run by a society—Unfurnished room—Agreement for occupation of room on weekly payment—Society reserved right to take possession of room at discretion on one month's notice—Possession to be taken only if society considered it essential in the interests of residents—Bona fide decision by society to take possession—Occupier a licensee, not a tenant—Society entitled to possession. *Abbeyfield (Harpenden) Society Ltd v Woods* [1968] 1 352, CA.

LICENCE (cont)

Licence to occupy premises (cont)—

Contractual licence—

Enforcement by assignees—Restrictive covenants affecting property other than land—Agreement for front of the house rights. **Clore v Theatrical Properties Ltd and Westby & Co Ltd** [1936] 3 483, CA.

Unmarried couple—Circumstances in which contract will be inferred—Circumstances indicating meeting of minds with intention to affect legal relationship—Contractual terms reasonably clearly made out—House acquired by man to provide accommodation for mistress and children—House owned by man—Relationship of man and mistress continuing over period of 17 years until death of man—Mistress generously supported by man—Whether contractual licence for mistress to remain in house to be inferred. **Horrocks v Forray** [1976] 1 737, CA.

Unmarried couple—Consideration to support contractual licence—House acquired by man to provide accommodation for mistress and children—Couple not intending to marry—Mistress giving up own rent-controlled flat to live in house with children—Implied licence to occupy house so long as children of school age and accommodation reasonably required by mistress and children—Whether consideration to support contractual licence—Whether mistress's licence revocable at will—Whether mistress entitled to compensation for revocation of licence. **Tanner v Tanner** [1975] 3 776, CA.

Description in document—

Terms of agreement indicating tenancy—Description of document not conclusive—Terms showing an intention to give exclusive possession and create a tenancy—Whether tenancy created. **Addiscombe Garden Estates Ltd v Crabbe** [1957] 3 563, CA.

Terms of agreement indicating licence—Occupiers not having exclusive possession—Agreement personal in nature—Petrol filling station—Licensees undertaking not to impede licensors in exercise of their rights of possession—Licensees undertaking to promote sales of licensors' products. **Shell-Mex and B P Ltd v Manchester Garages Ltd** [1971] 1 841, CA.

Deserted wife's right to occupy matrimonial home—

Revocation of licence—Length of notice to deliver up possession. **Vaughan v Vaughan** [1953] 1 209, CA.

Undertakings by husband—Licence not a contractual licence by virtue of husband's undertakings in maintenance order. **Re A Debtor, ex parte The Trustee v Solomon** [1966] 3 255, ChD.

House—

Furnished room—Separate rooms provided in house, formerly an hotel, for daily or weekly charges—Terms including daily cleaning of room, but no meals—Use of bathroom, etc, in common with others—Whether occupant of room a tenant or a licensee—Door of room having mortice lock and insecure Yale lock—Failure of proprietor to provide occupant with key to mortice lock—Occupant's room broken into and her goods stolen—Whether proprietor negligent. **Appah v Parncliffe Investments Ltd** [1964] 1 838, CA.

Licence distinguished from tenancy at will—

Exclusive occupation—Right to exclude owner from premises—Evidence of tenancy—Evidence not conclusive—Inference of licence when grant of exclusive occupation—Inference where personal advantage to occupier intended or grant a result of family arrangement or act of friendship or generosity. **Heslop v Burns** [1974] 3 406, CA.

Licence distinguished from tenancy—

Exclusive possession—Payment and acceptance of amount of rent due to landlord of licensor—Intention of parties—Whether licence or lease. **Isaac v Hotel de Paris Ltd** [1960] 1 348, PC.

Factor determining whether agreement creating licence or lease. **Cobb v Lane** [1952] 1 1199, CA.

Occupation conditional on payments being made to third party—Whether occupiers licensees or tenants. **Errington v Errington** [1952] 1 149, CA.

Permission to occupy furnished flat—Weekly payment—No agreement as to notice—Whether occupiers licensees or tenants. **E Moss Ltd v Brown** [1946] 2 557, CA.

Notice to terminate occupation—

Length of notice—Evacuees—Reasonable time for removal—Evacuees from abroad granted licence to occupy premises—Terms of notice of revocation—No necessity to state date of removal—Notice good though time stated for removal too short. **Minister of Health v Bellotti** [1944] 1 238, CA.

Occupation in return for services—

Licence or tenancy—Employer and employee—Retention by employee of possession of flat by consent after termination of service—Work of confidential nature—Direct access of flat to offices. **Murray, Bull & Co Ltd v Murray** [1952] 2 1079, QBD.

Revocation—

Notice—Length of notice—Reasonable notice—Licence for use of theatre—Express term entitling licensee to determine licence—No provision for determination by licensor. **Winter Garden Theatre (London) Ltd v Millenium Productions Ltd** [1947] 2 331, HL.

Licence to use quay for business of repairing boats—

Notice to terminate licence—

Length of notice—Whether seven days' notice to terminate use unreasonably short. **Iveagh (Earl) v Martin** [1960] 2 668, QBD.

Local taxation licences. *See* **Local government** (Local taxation licence).

Malicious refusal—

Action—

Statutory licensing power—Duty owed by licensing authority in regard to execution of statutory power—Refusal by authority to grant licence for cinema—Whether action lies for wrongful and malicious refusal to grant licence. **Asoka Kumar David v MAMM Abdul Cader** [1963] 3 579, PC.

LICENCE (cont)

Market—

Stallholder—

Grant of licence by owner to erect stall. *See* **Markets and fairs** (Rights of public to attend market—Stallholder—Grant of licence by owner of market to erect stall in specified place).

Marriage licence—

Grant—

Wales—Effect of dis-establishment of Church in Wales on. *See* **Ecclesiastical law** (Church in Wales—Dis-establishment—Effect on grant of marriage licences).

Milk. *See* **Food and Drugs** (Milk—Licence to sell).

Mineral licence—

New Zealand. *See* **New Zealand** (Mine—Mineral licence).

Mining—

Generally. *See* **Licence** (Mining).

Mining licence—

New South Wales. *See* **New South Wales** (Licence—Mining licence).

Termination—

Right to mine for magnesite—Non-exclusive licence—Whether licence terminable at will—Whether dated notice necessary—Whether distinction between period of grace after termination of revocable licence and period of reasonable notice to terminate licence. **Australian Blue Metal Ltd v Hughes** [1962] 3 335, PC.

Moneylender. *See* **Moneylender** (Licence).

Moveable dwellings. *See* **Housing** (Moveable dwellings—Licence).

Music and dancing. *See* **Entertainment** (Music and dancing licence).

Mutual licences—

Unilateral revocation—

Drainage to and from adjoining properties—Whether licence revocable by one owner while retaining benefit of the licence of the other owner. **Hopgood v Brown** [1955] 1 550, CA.

Notice to terminate occupation—

Date—

Earliest date that agreement can lawfully be terminated—Advertising hoardings—Agreements between contractors and site owners giving licences to maintain display hoardings—Site owners authorising another advertising contractor, a company, to determine existing licence agreements—Notice to terminate occupation given by letter signed by solicitors—Letter addressed to parent company and associated companies, but not separately sent or addressed to associated companies by name—Sufficiency of notice. **Allam & Co Ltd v Europa Poster Services Ltd** [1968] 1 826, ChD.

Occupation of premises. *See* Licence to occupy premises—Notice to terminate occupation, *ante*.

Nurses—

Agency for supply of nurses—

Licence by local authority. *See* **Nurse** (Agency for supply of nurses—Licence by local authority).

Operator's licence—Goods vehicle. *See* **Road traffic** (Goods vehicle—Operator's licence).

Oral—

Possession of land by oral licence for more than 12 years. *See* **Limitation of action** (Land—Adverse possession—Possession by oral licence for more than 12 years).

Patent. *See* **Patent** (Licence).

Pilot—

Carriage by air—

Private pilot's licence. *See* **Carriage by air** (Private pilot's licence).

Possession—

Burden of proof in criminal proceedings. *See* **Criminal evidence** (Burden of proof—Facts peculiarly within knowledge of accused—Licence).

Prison—

Release on licence. *See* **Prison** (Release on licence).

Provisional driving licence. *See* **Road traffic** (Driving licence—Provisional Licence).

Renewal—

Music and dancing licence. *See* **Entertainment** (Music and dancing licence—Renewal of licence).

Revocation—

Excessive punishment—

Certiorari. *See* **Certiorari** (Jurisdiction—Excessive punishment—Revocation of licence).

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Road service licence—

Express carriage. *See* **Road traffic** (Express carriage—Road service licence).

Public service vehicle. *See* **Road traffic** (Public service vehicle—Road service licence).

Salmon and trout fishing. *See* **Fish** (Salmon and trout—Licence to fish).

Ship repairs and alterations, for. *See* **Dock** (Ship repairs and alterations—Licence).

Street trading. *See* **Street trading** (Licence).

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Tenancy at will distinguished. *See* Licence to occupy premises—Licence distinguished from tenancy at will, *ante*.

Tenancy distinguished. *See* Licence to occupy land—Licence distinguished from tenancy, *ante*.

Theatre. *See* **Theatre** (Licence for the performance of stage plays).

Trade licence—

Vehicle. *See* **Road traffic** (Trade licence).

Trainer's licence. *See* Horse-racing—Trainer's licence, *ante*.

LICENCE (cont)

Unmarried couple—
House—

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Vehicle excise licence. *See* Road traffic (Excise licence).

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LICENSED COAL MERCHANT

Distribution of coal, by. *See* Coal (Distribution—Licensed merchant).

LICENSED HOUSE

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LICENSED PREMISES

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LICENSEE

Occupier's liability—

Duty to licensee. *See* Occupier's liability (Duty to licensee).

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LICENSING

Age—

Knowingly selling liquor to person under age. *See* Knowingly selling liquor to person under age, *post*.

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Notice of appeal—

Service—Time for service—Extension of time—Notice of appeal served, within 14 days allowed by s 22, on clerk to licensing justices—Notice of appeal served on grantee of licence after expiry of 14 days—Whether notice had to be served on grantee of licence—Whether quarter sessions could extend time for service—Licensing Act 1964, s 22. *R v Pembrokeshire Quarter Sessions, ex parte Bennell* [1968] 1 940, QBD.

Appeal to quarter sessions—

Costs. *See* Costs—Appeal to quarter sessions, *post*.

Application for licence—

Hearing. *See* Justices—Hearing of application for licence, *post*.

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Brewers—

Expense of obtaining new licence—Capital or revenue expenditure. *See* Income tax (Deduction in computing profits—Capital or revenue expenditure—Brewers—New licences).

Business tenancy—

Compensation for goodwill. *See* Landlord and tenant (Compensation for goodwill in respect of business premises—Licensed premises).

Caravan site—

Town and country planning. *See* Town and Country Planning (Caravan site licence).

Case stated—

Power of licensing justices to state a case. *See* Justices—Case stated—Power of licensing justices to state a case, *post*.

Certificate of non-objection—

Duty of licensing planning committee to try to secure that number, nature and distribution of licensed premises accord with local requirements—

Adoption by committee of policy of equation of barrelage—Policy to refuse applications for certificates unless applicant had acquired licence in suspense covering barrelage equal to estimated barrelage of new premises—Licences only obtainable from existing holders by purchase—Object of policy to relieve local authority of need to compensate existing holders in respect of licences which would not be re-sited—Whether proper ground for refusing certificate that applicant had not purchased licence covering required barrelage—Licensing Act 1964, s 119(2). *Kennedy v Birmingham Licensing Planning Committee* [1972] 2 305, CA.

Duty of licensing planning committee to try to secure that number, nature and distribution of premises accord with local requirements—

Factors to be considered—Conduct of premises an extraneous consideration—Licensing Act 1964, s 119(2). *R v London (Metropolis) Licensing Planning Committee, ex parte Baker* [1970] 3 269, QBD.

LICENSING (cont)

Certificate of non-objection (cont)—

Duty of licensing planning committee to try to secure that number, nature and distribution of licensed premises accord with local requirements—

Nature of licensed premises—Meaning—Club premises—Admission to membership of club—Delay between application for and admission to membership—Application for licence containing condition that delay should be 24 hours—Committee refusing to grant certificate unless period increased to 48 hours—Whether period of delay affecting nature of licensed premises—Whether committee having jurisdiction to refuse certificate on that ground—Licensing Act 1964, s 119(2). *Fletcher v London (Metropolis) Licensing Planning Committee* [1975] 2 916, HL.

Cinema—

Censorship of films for exhibition. *See* Cinema (Censorship).

Cinema. *See* Cinema (Licence).

Club—

Application for registration certificate—

Compliance with statutory requirements—Specification of address of club—Address of club—Meaning—Licensing Act 1964, Sch 5, para 1. *R v City and County of Exeter Justices, ex parte Fowler* [1966] 3 49, QBD.

Public dancing, music or other entertainment. *See* Entertainment (Music and dancing licence).

Search warrant—

Search of licensed premises—Execution on Sunday—Sunday Observance Act 1677, s 6—Magistrates' Courts Act 1952, s 102(3)—Licensing Act 1953, s 152(1). *Magee v Morris* [1954] 2 276, QBD.

Striking off register—

Licensing offences—Summons against secretary to show cause—Order for costs for sum in excess of costs of prosecution—Power of justices to make order. *R v Highgate Justices, ex parte Petrou* [1954] 1 406, QBD.

Consumption of intoxicating liquor after permitted hours—

Aiding and abetting by licensee—

Consumption by customers—Licensee unaware of offence—Whether aiding and abetting—Licensing Act 1921, s 4(b). *Thomas v Lindop* [1950] 1 966, KBD.

Knowledge of offence by licensee's servants—No knowledge in licensee—Liability of licensee—Licensing Act 1921, s 4(b). *Ferguson v Weaving* [1951] 1 412, KBD.

Passive assistance with knowledge of facts. *Tuck v Robson* [1970] 1 1171, QBD.

Costs—

Appeal to quarter sessions—

Appellant technically successful—Whether appellant can be ordered to pay licensing justices' costs—Licensing Act 1953, ss 36(1), 37(1)(a). *R v Hampshire Justices, ex parte Maggs* [1963] 1 818, QBD.

Disorderly conduct on premises. *See* Knowingly permitting disorderly conduct on premises, *post*.

Drunk on licensed premises—

Found drunk. *See* Found drunk on licensed premises, *post*.

Failure to comply with condition of licence—

Late night refreshment house. *See* Late night refreshment house—Failure to comply with condition of licence, *post*.

Forfeiture of intoxicating liquor and vessels. *See* Unauthorised sale of intoxicating liquor—Forfeiture of intoxicating liquor and vessels, *post*.

Found drunk on licensed premises—

Licensed premises—

Upper room let to private party—Defendants found drunk there—Whether 'licensed' premises—Licensing Act 1872, s 12. *Stevens v Dickson* [1952] 2 246, QBD.

Gaming on licensed premises—

Bingo—

Free bingo played on licensed premises—Prizes other than intoxicating liquor provided—No chance of losing—Whether gaming—Betting, Gaming and Lotteries Act 1963, ss 34(1), 55(1)—Licensing Act 1964, s 177. *McCullom v Wrightson* [1968] 1 514, HL.

Small lottery—

Exemption—Whether a small lottery that was exempted from illegality under Betting and Lotteries Act 1934, s 21, could lawfully be conducted on licensed premises—Licensing Act 1953, s 141(1)—Small Lotteries Gaming Act 1956, ss 1, 5(1). *Smith v Wyles* [1958] 3 279, QBD.

Intoxicating liquor—

Consumption after permitted hours. *See* Consumption of intoxicating liquor after permitted hours, *ante*.

Jurisdiction to confirm licence. *See* Licence—Confirmation—Jurisdiction, *post*.

Justices—

Appeal—

Music and dancing—Whether appeal lies from licensing justices to quarter sessions. *See* Quarter Sessions (Appeal to—Licensing appeal—Licensing justices refusing to renew dancing and music licence).

Case stated—

Power of licensing justices to state a case—Magistrates' Courts Act 1952, ss 87(1), 124(1). *Jeffrey v Evans* [1964] 1 536, QBD.

Consent to alteration of premises—

Alterations involving extension of licensed premises—Whether alterations 'in' premises—Licensing Act 1902, s 11—Licensing (Consolidation) Act 1910, s 71. *R v Weston-super-mare Licensing Justices, ex parte Powell* [1939] 1 212, CA.

Factors to be considered—Proposed structural alterations—Destruction of identity of premises—Relevant consideration—Change from hotel to public house—Licensing (Consolidation) Act 1910, s 71. *R v Pontypridd Licensing Justices, ex parte Ely Brewery Co Ltd* [1948] 2 581, KBD.

LICENSING (cont)**Justices (cont)—****Disqualification—**

Bias—Publican's licence—Order of removal by confirming authority—Justices also members of city council—Subject previously considered by council under planning scheme—Public statements showing hostile attitude. *R v Sheffield Confirming Authority, ex parte Truswell's Brewery Co Ltd* [1937] 4 114, KBD.

Interest in profits of premises—Exception—Application by co-operative society for off-licence—All justices either members, or spouses of members, of the society—Interest in profits of business carried on at premises—Whether justices disqualified—Whether licence invalidated—Licensing Act 1953, s 48(4), (5). *R v Barnsley County Borough Licensing Justices, ex parte Barnsley & District Licensed Victuallers' Assn* [1960] 2 703, CA.

General annual licensing meeting—

Adjournment—Statutory time limit of one month—Decision re-opened at adjourned meeting—Further adjournment to meeting not within the month—Whether permissible—Licensing (Consolidation) Act 1910, s 10—Licensing Act 1921, ss 1, 2—Licensing Rules 1921 (S R & O 1921 No 1313), r 9. *R v Wandsworth Licensing Justices* [1936] 2 394, KBD.

Hearing of application for licence—

General rule not to issue full licence to holder of restricted licence—Duty to consider facts of each case. *R v Torquay Licensing Justices, ex parte Brockman* [1951] 2 656, KBD.

Provisional licence—Full off-licence sought for supermarket—Supermarket in course of construction—Provisional licence only capable of being granted—Failure to specify in application that provisional licence sought—Whether necessary to apply specifically for provisional licence—Justices' finding that application a nullity—Whether mandamus to justices lay—Licensing Act 1964, ss 1(3), 6(1), Sch 2, para 4(d)—Finance Act 1967, s 5, Sch 7, para 1. *R v Merthyr Tydfil Licensing Justices, ex parte Duggan* [1970] 2 540, QBD.

Time—Second session inadvertently fixed more than one month after first session—Refusal of justices to hear applications—Whether mandamus to justices lay—Licensing Act 1953, Sch 2, Part 1, para 5. *R v Woodbury Licensing Justices, ex parte Rouse, R v Same, ex parte Oldham* [1960] 2 205, QBD.

Knowingly allowing person under age to consume intoxicating liquor in bar of licensed premises—

Intoxicating liquor including beer—

Consumption of shandy—Whether sale of beer that was mixed to form the shandy and thus a consumption of the beer sold—Licensing Act 1964, s 169(1). *Hall v Hyder* [1966] 1 661, QBD.

Knowingly permitting disorderly conduct on premises—**Co-licensees—Keepers—**

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Co-licensees—

'Keepers'—Management and sole control in one of two co-licensees—Liability—Metropolitan Police Act 1839, s 44. *Linnett v Commissioner of Police for the Metropolis* [1946] 1 380, KBD.

Knowingly selling liquor in breach of condition of licence—**Knowingly—**

Imputation of knowledge to licensee—Condition of restaurant licence that liquor not to be sold except to persons taking meals—Waitress authorised to serve drinks only if meal ordered—Sale by waitress of drink without meal—Licensee not having actual knowledge of such sale—Imputation of knowledge only if management delegated—Licensing Act 1961, s 22(1)(a). *Vane v Yiannopoulos* [1964] 3 820, HL.

Licensee systematically conducting club in breach of condition—

Licensee delegated management during his absence, intending system to continue—Condition of on-licence for club that liquor should be supplied only to members and their guests—Whether licensee had knowledge of acts in breach of condition committed during his absence—Licensing Act 1961, s 22(1)(a). *Ross v Moss* [1965] 3 145, QBD.

Knowingly selling liquor to person under age—**Evidence of age—**

Person under age of 18. *Wallworth v Balmer* [1965] 3 721, QBD.

Knowingly—

Imputation of knowledge to licensee—Barman selling liquor—Barman in sole charge of bar—Licensee present on another part of premises—Justices' finding that licensee had delegated responsibility for bar to barman—Barman guilty of offence of knowingly selling liquor—Licensee having no actual knowledge of sale—Whether licensee having effectively delegated responsibility although on premises—Whether licensee also liable for knowingly selling liquor—Licensing Act 1964, s 169(1). *Howker v Robinson* [1972] 2 786, QBD.

Servant of holder of licence—

Wife of holder of licence left in charge of licensed premises during his temporary absence—Sale of cider to boy of 14—No evidence that wife was contractually servant of or was being paid by, or under control of licence-holder—Whether wife a 'servant of holder of licence' for the purposes of the Licensing Act 1964, s 169(1). *Brandish v Poole* [1968] 2 31, QBD.

Late night refreshment house—**Failure to comply with condition of licence—**

Exemption from liability—On-licence—Licensee owning restaurant—Licensee also holding justices' on-licence for same premises—Licensee acting in breach of condition of late night refreshment house licence—Whether possession of justices' on-licence exempting him from liability—Late Night Refreshment Houses Act 1969, ss 1, 7(2). *Portsmouth Corp'n v Nishar Ali* [1973] 1 236, QBD.

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Late night refreshment house (cont)—

- House, room, shop or building kept open for public refreshment, resort and entertainment—
- Building inside which public may congregate for refreshment—Stall from which refreshment could only be served to members of public standing outside—Stall a permanent structure—Whether a refreshment house—*Late Night Refreshment Houses Act 1969, s 1. Frank Bucknell & Son Ltd v London Borough of Croydon* [1973] 2 165, QBD.

Licence—

Confirmation—

- Jurisdiction—General annual licensing meeting—Application for new licence—Bench equally divided—Adjournment of meeting—Application granted at adjourned meeting—Confirming authority—Jurisdiction to confirm licence. *Fussell v Somerset Quarter Sessions Licensing Committee* [1947] 1 44, KBD.

Grant of on-licence subject to condition—

- Condition restricting use of licence to off-sales and for obtaining occasional licences—Power of justices to impose condition—Validity of licence—*Licensing Act 1964, ss 1(2), 4(1)* (as amended by the Finance Act 1967, ss 5(1), 45(8), Sch 16, Part I). *R v Dudley Justices, ex parte Curlett* [1974] 2 38, QBD.

- Payment required in pursuance of condition prohibited—Condition prohibiting supply of intoxicating liquor to persons other than holders of admission tickets purchased for not less than specified amount—Whether condition requiring payments to be made to licensee valid—*Licensing Act 1964, s 4(1)* (as amended by the Finance Act 1967, ss 5(1), 45(8), Sch 16, Pt I). *R v Crown Court at Leeds, ex parte City of Bradford Chief Constable* [1975] 1 133, QBD.

- Restriction of sale to a limited class—Power of justices to impose condition—Validity of licence—*Licensing (Consolidation) Act 1910, s 14(1)*. *R v Sussex Confirming Authority, ex parte Tamplin & Sons' Brewery (Brighton) Ltd* [1937] 4 106, KBD.

New licence—

- Grant where increase of 25 per cent of population—Whether increase relates to city or ward or district electoral division—*Government of Ireland Act 1920, s 49(a)(b)*—*Intoxicating Liquor Act (Northern Ireland), 1923, s 9(c)*—*Intoxicating Liquor and Licensing Act (Northern Ireland), 1927, s 3(6)(iv)*. *Jennings v Kelly* [1939] 4 464, HL.

- Jurisdiction—Jurisdiction to grant new licence in substitution for current licence. *R v Godalming Licensing Committee, ex parte Knight* [1955] 2 328, QBD.

Premises disqualified for renewing licence—

- Premises containing less than two rooms for the accommodation of the public—Whether necessary for the two rooms to be licensed for service of intoxicating liquor—*Licensing Act 1953, ss 32(1), 34(2)*. *R v Middlesex County Confirming and Compensation Committee, ex parte Frost* [1956] 2 921, QBD.

Removal—

- Ordinary removal—Confirmation—Jurisdiction—Death of licensee, after grant of removal subject to confirmation, but before confirmation—Whether personal representative of deceased licensee can be granted confirmation of removal—*Licensing Act 1953, ss 22, 25*. *R v Confirming Authority of the Derby Borough Justices, ex parte Blackshaw* [1957] 2 823, QBD.

- Ordinary removal—Jurisdiction—Removal from county licensing division to borough within same county—Jurisdiction of borough justices to hear the application—*Licensing (Consolidation) Act 1910, s 24(3)*. *R v Leamington Spa Licensing Justices, ex parte Pinnington* [1947] 1 114, KBD.

- Planning removal—Conditional confirmation of proposal by planning authority—Condition complied with—Duty to grant removal—*Licensing Act 1953, s 58(2)*. *R v City of London Licensing Justices, ex parte Stewart* [1954] 3 270, QBD.

Renewal—

- Off-licence—Original licence for sale of beer only—Amendment of law to reduce forms of off-licence to two only—One form was for intoxicating liquor of all descriptions, the other was for sale of beer, cider and wine only—Renewal to be for licence of type nearest to the previously existing licence, viz, for sale of beer, cider and wine—Such licence similar to previously existing licence within s 3(3)(a) of *Licensing Act 1964*—*Licensing Act 1964, s 1(3)* as amended by *Finance Act 1967, ss 5(1)(c), Sch 7, para 1(b)(ii), 3(3)(a)*. *R v Leicester Licensing Justices, ex parte Bisson* [1968] 2 351, QBD.

Surrender—

- What constitutes surrender—Application for new licence—Existing licence handed to justices' clerk before hearing—New licence refused—Original licence returned to licensee—Whether original licence 'surrendered'—*Licensing (Consolidation) Act 1910, s 65(1)*. *Carter v Pickering* [1949] 1 340, KBD.

Transfer—

- Production of documents—Agreement or assurance under which licence to be transferred and held—Mortgage of licensed premises by proposed transferee to owners—Jurisdiction of justices to make production order—*Licensing (Consolidation) Act 1910, s 25(2)*. *R v Newington Licensing Justices, ex parte Conrad* [1948] 1 346, KBD.

Licensed premises—

Right of entry—

- Police constable. *See Intoxicating liquor* (Licensed premises—Constable—Right of entry).

Music and dancing. *See Entertainment* (Music and dancing licence).New licence. *See Licence*—New licence, *ante*.

Notice of appeal—

- Service. *See Appeal*—Notice of appeal—Service, *ante*.

Occasional licence—

Grant—

- Discretion of justices—Exercise of discretion—General rule of justices restricting number of such licences to same applicant in any one year to two—Whether rule illegal—*Licensing (Consolidation) Act 1910, s 64*. *R v Rotherham Licensing Justices, ex parte Chapman* [1939] 2 710, KBD.

LICENSING (cont)

Occasional licence (cont)—

Grant (cont)—

Jurisdiction to grant applications for consecutive periods of three days each—Applications in respect of events at festival lasting two months—Revenue Act 1862, s 13—Licensing (Consolidation) Act 1910, s 64(1), (2), (4). *R v Bath Licensing Justices, ex parte Chittenden* [1952] 2 700, QBD.

Jurisdiction to grant applications made regularly—Application in respect of premises regularly used for dance functions—Licensing (Consolidation) Act 1910, s 64. *Chandler v Emerton* [1940] 3 146, KBD.

Jurisdiction to grant in respect of premises which already fully licensed—Licensing (Consolidation) Act 1910, s 64(1), (3). *Brown v Drew* [1953] 2 689, QBD.

Jurisdiction to grant to holder of off-licence—Undertaking by licensee not to sell for consumption on premises—Licensing Act 1953, s 148(1). *R v Brighton Justices, ex parte Jarvis* [1954] 1 197, QBD.

Right to apply for licence—

Applicant nominee of a club licence—Justices' on-licence granted to applicant as nominee of proprietary club—Whether same applicant entitled to apply for occasional licence in respect of premises separate from club—Licensing Act 1961, s 35(2)(a). *Birt v Swansea Justices* [1963] 2 769, QBD.

Offence—

Bookmaking—

Business other than bookmaking—Carried on in licensed office. *See Gaming* (Betting—Bookmaker—Business of bookmaker receiving or negotiating bets—Offence for bookmaker to carry on business other than bookmaking in licensed office).

Club—

Striking off register. *See Club*—Striking off register—Licensing offences, *ante*.

Refusal to admit constable to licensed premises—

Constable's right of entry—Circumstances in which right exercisable. *See Intoxicating liquor* (Licensed premises—Constable—Right of entry).

Off-licence—

Renewal. *See Licence*—Renewal—Off-licence, *ante*.

On-licence—

Disqualification—

Conviction of offence—Appeal—Order prohibiting licence for premises in respect of which offence committed—Licence holder convicted in Crown Court of offence—Owner of premises convicted in same court of aiding and abetting offence—Owner liable to be punished as principal offender—Court making disqualification order in respect of premises—Owner applying for leave to appeal against order—Whether order a 'sentence' passed on owner—Whether Court of Appeal, Criminal Division, having jurisdiction to entertain an appeal by owner—Accessories and Abettors Act 1861, s 8—Licensing Act 1964, s 100 (as amended by the Refreshment Houses Act 1964, s 3(3), Sch)—Criminal Appeal Act 1968, ss 9, 50(1). *R v Ioannou* [1975] 3 400, CA.

Grant subject to condition. *See Licence*—Grant of on-licence subject to condition, *ante*.

Passenger vessel—

Sale of intoxicating liquor on board—

Permitted hours—Whether sale restricted to permitted hours—Finance (1909—10) Act 1910, Sch I, Pt D—Licensing Act 1921, ss 1(1), 18. *Green v Thames Launches Ltd* [1952] 2 332, QBD.

Permitted hours—

Extension—

Registered club—Entertainment—Gaming rooms—Whether proprietors were using the club for providing other 'entertainment as distinct from facilities for entertainment'—Licensing Act 1961, s 9(1). *Rous de Horsey v Rignell* [1963] 1 38, QBD.

Special requirements of the district—Licensing Act 1921, s 1(1). *R v Wisbech, Isle of Ely, Licensing Justices, ex parte Payne* [1937] 3 767, KBD, *R v Bradford Licensing Justices, ex parte Illingworth* [1939] 3 106, CA.

Supper-hour—Requirement that there should be a supply of substantial refreshment to which sale and supply of intoxicating liquor was ancillary—Liquor ancillary to refreshment—Whether necessary for total sale of liquor to be ancillary to total sale of food—Licensing Act 1953, s 104(1)(a). *R v Liverpool Licensing Justices, ex parte Tynan* [1961] 2 363, QBD.

General order of exemption—

Application—Jurisdiction—Unregistered club—Membership composed of workers in same factory—Workers working normal hours—Whether justices have jurisdiction to hear application—Licensing Act 1953, s 106(1)—Licensing Act 1961, s 38(3) and Sch 9, Pt 2. *Young v North Riding Justices* [1965] 1 141, QBD.

Passenger vessel. *See Passenger vessel*—Sale of intoxicating liquor on board—Permitted hours, *ante*.

Prohibition of sale or consumption of intoxicating liquor outside permitted hours—

Drinking-up time—Consumption by person taking meal—Consumption permitted for half hour after end of any period of permitted hours—Whether exception limited to restaurants—Whether applicable to all licensed premises—Licensing Act 1964, s 63(1)(b). *Jackson v Sinclair* [1973] 3 42, QBD.

Supply to private friends of licensee bona fide entertained by him at own expense—Private friends of licensee supplied by assistant manager in the absence of licensee—Implied authority of assistant manager—Bona fide entertainment—Licensing Act 1921, ss 4, 5(c). *Jones v Cockcroft* [1945] 2 333, KBD.

LICENSING (cont)

Permitted hours (cont)—

Prohibition of sale or consumption of intoxicating liquor outside permitted hours (cont)—

Supply to private friends of licensee bona fide entertained by him at own expense—Supply of drinks to staff—No payment by staff—Whether supply to private friends of licensee—Licensing Act 1953, s 100(2)(c). **Schofield v Jones** [1955] 3 337, QBD.

Special hours certificate—

Application—Who may apply—Holder of justices' licence in respect of premises—Licensed premises—Premises in respect of which in theatre licence in force—Premises exempt from need for Justices' licence—No holder of Justices' licence—Whether justices having jurisdiction to entertain application for certificate in respect of theatre premises—Licensing Act 1964, ss 77 199 (as amended by the Theatres Act 1968, s 19(1) Sch 2) 200(1). **R v Licensing Justices for South Westminster Ex parte Raymond** [1973] 3 106, QBD.

Permitted hours for premises for which certificate in force—Bar in premises—Permitted hours not applicable to bar—Meaning of 'bar'—Place mainly or exclusively used for sale and consumption of intoxicating liquor—Premises consisting of dancing area with tables and chairs and counter from which intoxicating liquor served—Special hours certificate in force for whole premises—Nothing separating counter from rest of premises—Whether counter a 'bar'—Licensing Act 1964, ss 76(5), 201(1). **Carter v Bradbeer** [1975] 3 158, HL.

Special order of exemption for special occasion—

Club premises—Premises licensed for persons attending social functions held by outside bodies—Application for special order of exemption in respect of function held by outside body—Refusal on ground that function not a special occasion for club members—Character of body holding function not in itself determining whether function special occasion or not—Licensing Act 1964, s 74(4). **R v Metropolitan Police Comr ex parte Ruxton** [1972] 1 310, QBD.

Dances at hotel—Organised by licensee—Held regularly twice a week—No connection with local or national event—Whether 'special occasion'—Licensing Act 1964, s 74(4). **Lemon v Sargent** [1971] 3 936, QBD.

Football match—Match nearly every week—Whether 'special occasion'—Licensing Act 1964, s 74(4). **R v Llanidloes (Lower) Justices, ex parte Thorogood** [1971] 3 932, QBD.

Planning committee—

Certificate of non-objection. *See* Certificate of non-objection—Duty of licensing planning committee to try to secure that number, nature and distribution of licensed premises accord with local requirements, *ante*.

Premises—

Gaming. *See* Gaming (Licensing of premises).

Provisional licence—Hearing of application. *See* Justices—Hearing of application for licence—

Provisional licence, *ante*.

Public motor vehicles—

Australia. *See* Australia (Transport—Freedom of inter-state trade—Licensing of public motor vehicles).

Registration certificate—

Application—

Club. *See* Club—Application for registration certificate, *ante*.

Removal of licence. *See* Licence—Removal, *ante*.

Renewal of licence. *See* Licence—Renewal, *ante*.

Sale of liquor by retail without licence—

Absolute offence—

Sale to non-member of working men's club in erroneous belief that customer was a member of the club—Licensing Act 1964, s 160(1)(a), (2). **French v Hoggett** [1967] 3 1042, QBD.

Dismissal of informations—

Appeal by excise officer to quarter sessions—Appeal suspended pending application for order of prohibition—Excise officer person 'aggrieved'—Statutory right of appeal—Excise Management Act 1827, ss 82–85—Finance (1909–10) Act 1910, s 50(3). **R v London Justices, ex parte Hoey** [1945] 2 298, KBD.

Incorporated members' club—

Sale to members—Liquor served to members and honorary members in exchange for money payment—Liquor purchased in club's name as authorised by club committee—Agency—Whether club separate legal entity apart from its members—Whether service of liquor to members a sale—Licensing (Consolidation) Act 1910, s 65. **Trebanog Working Men's Club and Institute Ltd v Macdonald, Monkwearmouth Conservative Club Ltd v Smith** [1940] 1 454, KBD.

Place of sale—

Order at licensed premises—Delivery postponed pending instructions—Liquor collected and delivered to and paid for at unlicensed club after permitted hours—Appropriation—Finance (1909–10) Act 1910, s 50(3). **Furby v Hoey** [1947] 1 236, KBD.

Sale—

Social party—No justices' licence—Payment made in advance for entertainment and drink—Drinks, including intoxicants, available to guests to help themselves—No payment at party and no restriction on amount consumed—Whether a sale of intoxicating liquor at the party—Whether what took place was in the nature of a sale of intoxicating liquor within the meaning of the Licensing Act 1953, ss 120(1), 154(1). **Doak v Bedford** [1964] 1 311, QBD.

Sale of bottled beer by servants of hotel to guests—

Liability of manager and proprietors—Finance (1909–10) Act 1910, s 50(3). **Hotel Regina (Torquay) Ltd v Moon** [1940] 2 495, KBD.

Sale without justices' licence—

Burden of proof as to possession of licence. *See* Criminal evidence (Burden of proof—Negative averment—Prohibition of act subject to proviso, exception, excuse or qualification—Burden of proving that proviso etc applicable—Intoxicating liquor—Sale by r

LICENSING (cont)

Search warrant—

Search of licensed premises—

Club. *See* Club—Search warrant—Search of licensed premises, *ante*.Slaughterhouses. *See* Food and drugs (Slaughterhouse—Licensing).

Small lottery—

Conducted on licensed premises. *See* Gaming on licensed premises—Small lottery, *ante*.Special hours certificate. *See* Permitted hours—Special hours certificate, *ante*.

Special occasion—

Special order of exemption. *See* Permitted hours—Special order of exemption for special occasion, *ante*.Supper-hour extension. *See* Permitted hours—Extension—Supper-hour, *ante*.Surrender of licence. *See* Licence—Surrender, *ante*.

Taking from licensed premises intoxicating liquor outside permitted hours—

Offence—

Take from—Whether offence incomplete until liquor is outside the licensed premises—Licensing Act 1953, s 100(1)(b). *Pender v Smith* [1959] 2 360, QBD.

Tobacco—

Sale by unlicensed person. *See* Tobacco (Sale by unlicensed person).Transfer of licence. *See* Licence—Transfer, *ante*.

Unauthorised sale of intoxicating liquor—

Forfeiture of intoxicating liquor and vessels—

Circumstances in which liquor and vessels forfeited—Members' club—Only one member convicted—Whether forfeiture incurred—Licensing Act 1953, s 152(2). *R v Lewis Justices, ex parte Trustees of the Plumpton and District Club* [1960] 2 476, QBD.

LIEN

Accountant. *See* Accountant (Lien).

Administration of estates—

Gift cum onere—Paramount lien for debts due to company). *See* Administration of estates (Gift—Gift cum onere—Paramount lien for debts due to company).

Animals—

Maintenance of animals. *See* Maintenance of animals, *post*.Auctioneer. *See* Auctioneer (Lien).Banker's lien. *See* Bank (Lien).

Deposit of documents of title—

Equitable charge by way of sub-mortgage—

Common law lien on documents deposited—Ancillary rights destroyed when equitable charge avoided as against liquidator under Companies Act 1948, s 95(1),(2). *Re Molton Finance Ltd* [1967] 3 843, CA.

Distrainor's lien—

Cattle straying. *See* Animal (Damage feasant—Distraint—Lien of distrainor).

Enforcement—

Sale. *See* Animal (Damage feasant—Distraint—Lien of distrainor).

Equitable lien—

Purchase of shares—

Money advanced by father to son—Arrangement for repayment out of dividends—Whether father entitled to retain shares until all sums paid. *Re Crossman* [1939] 2 530, ChD.Innkeeper. *See* Inn (Lien).

Life insurance—

Policy moneys. *See* Insurance (Life insurance—Policy moneys—Lien on policy moneys).

Maintenance of animals—

Pigs—

Farmer agreeing with company to care for sows and their litters—Boars supplied by company for servicing sows—No element of improvement but merely maintenance and natural increase—Whether farmer had particular lien on pigs in his possession for sums owing to him for such care. *Re Southern Livestock Producers Ltd* [1963] 3 801, ChD.

Maritime lien—

Admiralty action. *See* Admiralty (Jurisdiction—Action in rem—Maritime lien or other charge on ship).Generally. *See* Shipping (Maritime lien).

Mechanics' lien—

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Canada. *See* Canada (Lien—Mechanics' lien—Oil well).

Mortgaged property—

Tenant's contract to purchase property on landlord's undertaking to repair—

Mortgage of property by landlord to third party—Repairs carried out by tenant on landlord's failure to do so—Claim for possession by mortgagee—Whether tenant entitled to lien in respect of repairs. *Lee-Parker v Izzet* [1971] 3 1099, ChD.

Motor vehicle—

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Purchaser's lien—

Sale of land. *See* Sale of land (Purchaser's lien).

Repairer's lien—

Motor repairer—

Motor car let on hire-purchase agreement—Repairs at request of hirer after determination of agreement—Whether repairer having lien on car against owner. *Bowmaker Ltd v Wycombe Motors Ltd* [1946] 2 113, KBD.

Sale—

Enforcement of lien. *See* Enforcement—Sale, *ante*.Shares. *See* Equitable lien—Purchase of shares, *ante*.Solicitor. *See* Solicitor (Lien).Specific performance. *See* Vendor's lien—Specific performance, *post*.

LIEN (cont)

Vendor's lien—

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Registration—

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Specific performance—

Preservation of lien—Purchase of shares—Transfer of shares conditional on payment of purchase price—Calculation of purchase price in accordance with prescribed formula—Calculation not possible until future date—Vendor agreeing to execute transfer of shares in company to plaintiffs forthwith on termination of his employment with company—Price payable to be determined by valuation from company's accounts for two years following date of transfer—Whether plaintiffs entitled to order to execute transfer in advance of payment of purchase price. **Langen & Wind Ltd v Bell** [1972] 1 296, ChD.**LIFE**

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Amending order—

Sale of railway—

Application for order authorising sale of railway to company formed to operate it—Matters to be taken into account by Minister in determining application—Whether Minister entitled to take public interest into account—Light Railways Act 1896, ss 7 and 24. **Rother Valley Railway Co Ltd v Ministry of Transport** [1970] 3 802, CA.**LIGHT SIGNALS**Road traffic. *See* **Road traffic** (Traffic sign—Light signals).**LIGHTERAGE***See* **Shipping** (Lighterage).**LIGHTING**

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Loading and unloading operations for. *See* **Dock** (Loading and unloading—Lighting).

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Obstruction on highway. *See* **Highway** (Obstruction—Lighting of obstruction).

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LIGHTING RESTRICTION

Bicycles—

Statutory provision that only one lamp need be carried—

Cycle with two headlamps—Whether offence to carry two headlamps—Road Transport Lighting Act 1927, s 5(1)(a)—Lighting (Restrictions) Order 1940 (S R & O 1940 No 74), para 31. **Blackshaw v Chambers** [1942] 2 678, KBD.

Obstructions on highway—

Lighting obstructions—

Air-raid shelter in highway—Cyclist injured by collision with shelter—Power of local authority to erect shelter—Lighting—Civil Defence Act 1939, ss 9, 13—Lighting (Restrictions) Order, 1939 (S R & O 1939 No 1098). **Fox v Newcastle-upon-Tyne City Council** [1941] 2 563, CA.

Sandbag-barrier on pavement—Pedestrian injured by colliding with barrier—Power of local authority to erect barrier—Lighting—Contributory negligence—Civil Defence Act 1939, s 9—Emergency Powers (Defence) Act 1939, s 1—Defence (General) Regulations 1939, reg 51—Lighting (Restrictions) Order 1939, (S R & O 1939 No 1098). **Jelley v Ilford Borough Council** [1941] 2 468, CA.

Sand-bin on pavement—How far affecting obligation to light obstructions in street—Metropolis Management Act 1855, s 130—London County Council (General Powers) Act 1928, s 33—Lighting (Restrictions) Order 1939 (S R & O 1939 No 1098), para 1. **Lyus v Stepney Borough Council** [1940] 4 463, CA.

Street refuge—How far affecting obligation to light obstructions in street—Metropolis Management Act 1855, ss 108, 130—Lighting (Restrictions) Order 1939 (S R & O 1939 No 1098), paras 1, 4(d). **Wodehouse v Levy (St Marylebone Borough Council, third party)** [1940] 4 14, CA. **Greenwood v Central Service Co Ltd (St Marylebone Borough Council, third party)** [1940] 3 389, CA.

Prohibition against illuminating advertising sign—

Licence to erect sign—

Licensee having right to determine agreement if sign required to be altered or amended—Whether prohibition requiring alteration or amendment to sign—Right of licensee to determine licence to erect sign—Lighting (Restrictions) Order 1939 (S R & O 1939 No 1098). **Williams v Mercer** [1940] 3 292, CA.

LIMITATION FUND

Admiralty proceedings—

Interest on fund. *See* **Admiralty** (Practice—Interest—Rate of interest on limitation fund).

LIMITATION OF ACTION

Account—

Action for account—

Husband and wife. *See* **Action for account**—Meaning—Husband and wife, *post*. Action for accountn *post*.

Accrual of cause of action—

Cause of action—

Facts essential for bringing actions as distinct from evidence of facts—Local authority formerly electricity undertakers—Funds of electricity undertaking transferred to electricity board on nationalisation—Minister's decision that funds were held as electricity undertakers—Decision not a condition precedent to cause of action accruing, but evidence of an essential fact—Time ran from vesting date, not date of Minister's decision—Electricity Act 1947, s 15(3). **Central Electricity Generating Board v Halifax Corp'n** [1962] 3 915, HL.

Acknowledgment—

Acknowledgment by agent—

Agent—Loan to company by director—Balance sheet signed by creditor director—Signature of accountants to their certificate of the balance sheet and accounts—Whether accountants agents to give acknowledgment—Limitation Act 1939, ss 23(4), 24(2)—Companies Act 1948, s 155(1). **Re Transplanters (Holding Company) Ltd** [1958] 2 711, ChD.

Agent—Mortgage of interest under will comprising realty and personality—Estate accounts and distribution statement sent by trustees of will to mortgagee—Whether trustees agents of beneficiary—Real Property Limitation Act 1874, s 8. **Re Edwards' Will Trusts** [1937] 3 58, ChD.

Acknowledgment in writing—

Balance sheets of company showing loans—Loans including loans on which the plaintiffs claimed—Balance sheets signed by director months after date at which they showed financial position of company—Whether an acknowledgment of an existing liability—Whether fresh limitation period began from signing of balance sheets—Indian Limitation Act 1908 (No 9 of 1908), s 19. **Consolidated Agencies Ltd v Bertram Ltd** [1964] 3 282, PC.

LIMITATION OF ACTION (cont)**Acknowledgment (cont)—****Acknowledgment in writing (cont)—**

Signature—Balance sheet of company—Company director—Fiduciary duty—Debt owed by company to director—Signature of balance sheet by director not capable of constituting effective acknowledgment in writing—Balance sheet approved by members of company in general meeting—Whether balance sheet thereby becoming an effective acknowledgment—Limitation Act 1939, ss 23(4), 24. *Re Gee & Co (Woolwich) Ltd* [1974] 1 1149, ChD.

Date of acknowledgment—

Fresh cause of action accruing on date of acknowledgment of claim—Balance sheet of company—Signature of directors—Balance sheet signed 11 months after end of relevant financial year—Balance sheet acknowledging debt to claimant—Whether capable of operating as acknowledgment of debt as at date of balance sheet—Limitation Act 1939, s 23(4). *Re Gee & Co (Woolwich) Ltd* [1974] 1 1149, ChD.

Debt—

Acknowledgment of a claim—Need for admission that debt or other liquidated amount outstanding and unpaid—Limitation Act 1939, s 23(4). *Good v Parry* [1963] 2 59, CA.

Arrangement in lieu of payment of interest—Creditor living rent-free on debtor's farm and receiving free farm produce—Continuous acknowledgment. *Re Wilson* [1937] 3 297, 917, ChD.

Cause of action—Whether new cause of action—Whether to be pleaded in statement of claim or in reply—Limitation Act 1939, s 23(4). *Busch v Stevens* [1962] 1 412, QBD.

Company—Contract depending on contingency—Acknowledgment in balance sheet—Acknowledgment by board of debt owed to themselves as trustees. *Ledingham v Bermejo Estancia Co Ltd* [1947] 1 749, KBD.

Debt due to executor mentioned in inland revenue affidavit—Debt mentioned in statement to trustee in bankruptcy of creditor—Same hand to pay and receive—Debt due to executor—Suspension of operation of statute. *Trustee in Bankruptcy of Bowring-Hanbury v Bowring-Hanbury* [1943] 1 48, CA.

Defence in foreign action denying liability—Whether acknowledgment for purposes of Limitation Act—Limitation Act 1939, s 23(4). *Re Flynn (decd)* (No 2) [1969] 2 557, ChD.

Interrogatory answer to which might constitute acknowledgment—Whether interrogatory necessary to dispose fairly of cause or matter—Limitation Act 1939, s 23(4)—RSC Ord 26, r 1(3). *Lovell v Lovell* [1970] 3 721, CA.

What amounts to an acknowledgment—Action to recover money lent—Denial of indebtedness—Plaintiff relying on letter sent to defendant—Letter not in terms referring to debt sued on—Letter suggesting no debt but possibly obligation of another nature—Letter not an 'acknowledgment of debt'. *Ward v Tibbatts* [1936] 2 656, KBD.

What amounts to an acknowledgment—Balance sheets of debtor company handed to shareholder creditor—Parol evidence to explain entries—Debt due to creditor included in sum set out as total of company's debts—Whether capable of operating as acknowledgment of debt as at date of balance sheet—Limitation Act 1939, ss 23(4), 24(1) (2). *Jones v Bellegrave Properties Ltd* [1949] 2 198, CA.

What amounts to an acknowledgment—Letter acknowledging indebtedness but not specifying amount of debt—Parole evidence of amount—Tax deduction certificates—Whether acknowledgments—Limitation Act 1939, s 23(4). *Dungate v Dungate* [1965] 3 818, CA.

Interrogatory—

Interrogatory to obtain evidence that document written before issue of writ amounted to acknowledgment—Whether interrogatory necessary to dispose fairly of cause or matter—Limitation Act 1939, s 23(4)—RSC Ord 26, r 1(3). *Lovell v Lovell* [1970] 3 721, CA.

Mortgage—

Payments made to mortgagee by receiver appointed under a different mortgage—Receiver's appointment contrary to Companies Act 1929, s 306. *Portman Building Society v Galloway* [1955] 1 227, ChD.

Title to land—

Acknowledgment of plaintiff's title—Acknowledgment by agent of defendant—Mortgage—Acknowledgment by mortgagee's solicitor—Limitation Act 1939, ss 4(3), 23(1)(a). *Wright v Pepin* [1954] 2 52, ChD.

Offer, subject to contract, to owner's agent by person in possession to purchase the land—Limitation Act 1939, ss 23(1)(a), 24(1)(2). *Edginton v Clark (Macassey and others (Trustees of Whitley House Trust) third parties)* [1963] 3 468, CA.

Action—**Proceeding in a court of law—**

Application to issue distress warrant in respect of arrears of general rates—Application for warrant more than six years after demand—Whether application 'proceeding in a court of law'—Date on which cause of action accrued—Limitation Act 1939, ss 21(1)(d), 31(1). *China v Harrow Urban District Council* [1953] 2 1296, QBD.

Action for an account—**Meaning—**

Husband and wife—Property—Claim under s 17 of Married Women's Property Act 1882. *Spoor v Spoor* [1966] 3 120, Div.

Action on judgment—**Action—**

Warrant for possession—Application to extend time—Warrant obtained 14 years before claim for order to extend time for execution—Whether court will give leave to issue execution when right of action barred—Limitation Act 1939, s 2(4)—Increase of Rent and Mortgage Interest (Restrictions) Act 1920, s 5(4). *Lougher v Donovan* [1948] 2 11, CA.

LIMITATION OF ACTION (cont)

Action on judgment (cont)—

Action (cont)—

Warrant for possession—Suspension of warrant—Non-enforcement for more than 12 years since date of issue—Small Tenements Recovery Act 1838, s 1—Rent and Mortgage Interest Restrictions Act 1923, s 4(2)—Limitation Act 1939, s 2(4). *Mills v Allen* [1953] 2 534, CA.

Action on statute—

Action based on Gaming Act—

Action on specialty—Appropriate period of limitation—Gaming Act 1835, s 2—Limitation Act 1939, s 2(3). *Brueton v Woodward* [1941] 1 470, KBD.

Actions in tort against estates of deceased persons—

Period of limitation—

Action brought after lapse of more than six years after accident but within six months of administration—Whether action against tortfeasor's administrator barred—Law Reform (Miscellaneous Provisions) Act 1934, s 1(3)—Limitation Act 1939, ss 2, 32. *Airey v Airey* [1958] 2 571, CA.

Adverse possession. *See* Land—Adverse possession, *post*.

Agent—

Concealment of right of action by fraud. *See* Concealment of right of action by fraud—Concealment by agent, *post*.

Breach of statutory duty—

Action for damages. *See* When time begins to run—Action for damages for breach of statutory duty, *post*.

Cause of action—

Accrual. *See* Accrual of cause of action, *ante*.

Charge on land—

Enforcement. *See* When time begins to run—Action to enforce legal charge on land, *post*.

Child in care of local authority. *See* Persons under disability—Custody of parent—Child in care of local authority, *post*.

Claim to personal estate of deceased person—

Action by next of kin against beneficiary—

Action to recover sums paid under invalid residuary bequest—Whether 'action in respect of claim to personal estate of deceased'—Limitation Act 1939, s 20. *Ministry of Health v Simpson* [1950] 2 1137, HL.

Company—

Debt—

Acknowledgment. *See* Acknowledgment—Debt—Company, *ante*.

Restoration to register—

Period of limitation. *See* Company (Restoration to register—Period of limitation).

Compulsory purchase order—

Application to quash order—Time limit. *See* Compulsory purchase (Compulsory purchase order—Application to quash order—Time limit).

Computation of limitation period. *See* When time begins to run, *post*.

Concealment of right of action by fraud—

Concealment by agent—

Building contract—Developer party to contract—Developer employing builder to construct house in accordance with contract—Builder an independent contractor—Builder concealing defects in foundations—Whether builder 'agent' of developer—Limitation Act 1939, s 26(b). *Archer v Moss* [1971] 1 747, CA.

Conduct such as to hide from plaintiff existence of right of action—

Equitable fraud—Building contract—House—Foundations not of sufficient standard and not in accordance with contract—Concrete mixture not of standard specified—Foundations covered up when plaintiff bought house—House unfit to live in—Defects discovered eight years later—Limitation Act 1939, s 26(b). *Archer v Moss* [1971] 1 747, CA.

Knowledge on part of defendants of facts giving plaintiff right of action—Building contract—Contract for sale of land and erection of house thereon—Implied term that foundations reasonably fit for house—House built on site of old chalk pit—Pit having been filled in in haphazard fashion and in part with organic matter—Failure of defendants as vendors to warn plaintiff of nature of site and risk of building thereon—Knowledge of defendants that house not having properly reinforced foundations—Subsidence after lapse of years—Whether failure to warn plaintiff of nature of site and risk amounting to concealment of right of action by fraud—Limitation Act 1939, s 26(b). *King v Victor Parsons & Co (a firm)* [1973] 1 206, CA.

Conversion—

Action based on fraud—Right of action concealed by fraud—Bailment of goods—Owner abroad during war—Bailee's business closing down—Goods given away as worthless—Owner not notified—Limitation Act 1939, s 26(a)(b). *Beaman v ARTS Ltd* [1949] 1 465, CA.

Action based on fraud—Right of action concealed by fraud—Sale of heirloom by tenant for life to defendants—Resale by defendants to third party—Trustees' action for damages for conversion—Whether defendants claiming through tenant for life—Whether action statute-barred—Limitation Act 1939, ss 26(b), 31(4). *Eddis v Chichester Constable* [1969] 2 912, CA.

Due diligence to discover defects—

Reliance on expert knowledge and honesty—Building contract for house—Facing bricks used were of a type different from that specified and some were defective—Plaintiff relied on builder's expert knowledge and honesty—Defects not discovered by plaintiffs, using reasonable diligence, for some eight years—Whether action for breach of contract state statute-barred—Measure of damages—Limitation Act 1939, s 26(b). *Clark v Woor* [1965] 2 353, QBD.

LIMITATION OF ACTION (cont)

Concealment of right of action by fraud (cont)—

Marriage contract—

Invalid marriage—Breach of promise—Breach of implied warranty that party was legally in a position to marry—Plaintiff unaware of illegality—Postponement of limitation period—Limitation Act 1939, ss 2(1)(a), 26(b). *Shaw v Shaw* [1954] 2 638, CA.

Negligence—

Failure by solicitor to commence an action on behalf of client within statutory period—Ex gratia payment subsequently made by intended defendant for client's benefit—Concealment of source of gift—Limitation Act 1939, s 26(b). *Kitchen v Royal Air Forces Assn* [1958] 2 241, CA.

Trover. *See Trover* (Limitation of action—Postponement of limitation period—Action based on fraud).

Conversion—

Action based on fraud—

Concealment of right of action. *See* Concealment of right of action by fraud—Conversion—Action based on fraud, *ante*.

Counterclaim. *See* Set-off or counterclaim, *post*.

Crown—

Proceedings against. *See* Proceedings against Crown, *post*.

Requisites for establishing title against. *See* Land—Adverse possession—Foreshore—Requisites for establishing title against the Crown, *post*.

Crown proceedings. *See* Crown (Proceedings against—Period of limitation).

Current account—

Part payment. *See* Part payment—Current account, *post*.

Damages—

Negligence of solicitor—

Action not brought within limitation period. *See* Solicitor (Negligence—Damages—Action not brought within limitation period).

Debt—

Acknowledgment. *See* Acknowledgment—Debt, *ante*.

Detinue. *See* When time begins to run—Actions of tort—Detinue, *post*.

Disability—

Persons under—

Extension of time. *See* Persons under disability, *post*.

Dispossession—

Land. *See* Land—Adverse possession—Dispossession of true owner, *post*.

Duration of specified period. *See* Time (Duration of specified period).

Dwelling house—

Adverse possession—

Period of adverse possession. *See* Land—Adverse possession—Period of adverse possession, *post*.

Ecclesiastical law. *See* Ecclesiastical Law (Limitation of action).

Evidence of adverse possession—

Land. *See* Land—Adverse possession—Evidence, *post*.

Expert knowledge—

Reliance on. *See* Concealment of right of action by fraud—Due diligence to discover defects—Reliance on expert knowledge and honesty, *ante*.

Extension of time—

Persons under disability. *See* Persons under disability, *post*.

Extension of time limit—

Discretion—

Principle governing determination whether leave should be granted—Reasonable prospect of winning action and obtaining adequate damages on known position, if completely advised—Preliminary issue without evidence directed—Severe injury to plaintiff in 1961—Deterioration in 1965—Plaintiff alleged want of knowledge of future deterioration before 1965—Limitation Act 1963, ss 1(3), 7(4). *Goodchild v Greatness Timber Co Ltd* [1968] 2 255, CA.

Material fact of decisive character outside knowledge of plaintiff—

Action for damages for personal injuries due to unsafe premises—Identity of occupier unknown to plaintiff until after expiration of limitation period—Whether identity of occupier a 'material fact'—Limitation Act 1963, ss 1(3), 7(3)(c)(5). *Re Clark v Forbes Stuart (Thames Street) Ltd (intended action)* [1964] 2 282, CA.

Ignorance of claim against employer—Application by member of trade union to union for advice—All reasonable steps taken by member—Attributability of injury first known by member when union's advice communicated to him in July, 1967—Nature of applicant's illness known to him in September, 1966—Disease contracted in employment before 1960—Leave granted ex parte—Limitation Act 1963, s 7(5). *Pickles v National Coal Board* [1968] 2 598, CA.

Ignorance of claim against employer—Application by member of trade union to union for advice—All reasonable steps taken by member—Nature of member's illness known to him in 1966—Trade union's advice that action statute-barred based on mistaken belief that nature of member's illness known to him in 1962—Member not informed by trade union that illness caused by breach of statutory duty or negligence of employers—Whether lack of knowledge of material facts relating to the cause of action—Limitation Act 1963, ss 1(3), 7(3). *Drinkwater v Joseph Lucas (Electrical) Ltd* [1970] 3 769, CA.

Lack of knowledge of extent of injury—Plaintiff injured on employers' premises in 1948—Full extent of injury not realised until after six year limitation period expired—Plaintiff receiving offer of workmen's compensation in settlement in 1968 when became redundant—Plaintiff's union advising him throughout no common law claim—Plaintiff only seeking legal advice after became redundant—Plaintiff bringing negligence action within 12 months of receiving legal advice—Whether claim statute-barred—Limitation Act 1939, s 2(1)—Limitation Act 1963, ss 1, 7. *Knipe v British Railways Board* [1972] 1 673, CA.

LIMITATION OF ACTION (cont)

Extension of time limit (cont)—

Material fact of decisive character outside knowledge of plaintiff (cont)—

Lack of knowledge of extent of injury—Test whether lack of knowledge of 'decisive character'—Whether reasonable to seek advice—Whether advice would have been to bring action—Plaintiff contracting pneumoconiosis in defendants' employment—Continuing in defendants' employment after being notified of disease—Prospects of success of claim for damages—Difficulty of bringing claim whilst continuing in defendants' employment—Limitation Act 1963, ss 1(3), 7(3)(4). *Smith v Central Asbestos Co Ltd* [1971] 3 204, CA.

Lack of knowledge that injury due to negligence or breach of duty giving rise to cause of action—Claim not statute-barred—Limitation Act 1963, s 7(4). *Newton v Cammell Laird & Co (Shipbuilders and Engineers) Ltd* [1969] 1 708, CA.

Lack of knowledge that injuries attributable to negligence, nuisance or breach of duty—Plaintiff knowing that injury resulting from acts and knowing extent of injury—Plaintiff reasonably believing that acts did not afford him grounds for an action at law—Plaintiff not knowing that injuries caused by defendants' wrongful conduct—Plaintiff contracting asbestosis in defendants' employment—Disease caused by defendants' breaches of statutory regulations—Plaintiff receiving disablement benefit in respect of the disease—Works manager informing plaintiff that he could not receive benefit and claim damages against defendants—Limitation Act 1963, ss 1(3), 7(3). *Central Asbestos Co Ltd v Dodd* [1972] 2 1135, HL.

Lack of knowledge that facts founding worthwhile cause of action—Reasonable steps taken by plaintiff to ascertain whether a cause of action—Whether time beginning to run when plaintiff acquiring knowledge of relevant facts or when discovering that he has worthwhile cause of action—Limitation Act 1963, s 1(3) (as amended by the Law Reform (Miscellaneous Provisions) Act 1971, s 1(1)). *Harper v National Coal Board* [1974] 2 441, CA.

Mistaken belief that claim statute-barred—Whether mistaken belief by plaintiff amounts to mistake as to material fact—Limitation Act 1963, s 7(3). *Drinkwater v Joseph Lucas (Electrical) Ltd* [1970] 3 769, CA.

Order for extension—

Application by defendants to set aside order—Refusal of application—Appeal to Court of Appeal—Whether appeal lies to House of Lords from refusal to set aside order giving leave. *Cozens v North Devon Hospital Management Committee* [1966] 2 799, CA.

Application by defendants to set aside order—Whether defendants had right to make such application—Limitation Act 1963, ss 1(1)(a), 2(1)(2)(4). *Cozens v North Devon Hospital Management Committee* [1966] 2 799, CA.

Persons under disability. *See* Persons under disability, *post*.Extension of validity of writ. *See* Writ (Extension of validity).

Fatal accident—

Amendment of writ. *See* Writ (Amendment—Amendment after expiry of limitation period—Claim under Fatal Accidents Acts).

Application of statutory limitation period—

Third-party insurance—Liability admitted by insurance company—Writ issued more than 12 months after death—Fatal Accidents Act 1846, s 3. *Cohen v Snelling* [1943] 2 577, CA.

Material facts of decisive character unknown to deceased—

Application for leave to join new defendant to action—Application more than 12 months after death—Limitation Act 1963, s 3(4). *Lucy v W T Henleys Telegraph Works Co Ltd* [1969] 3 456, CA.

Foreshore—

Adverse possession of. *See* Land—Adverse possession—Foreshore, *post*.

Fraud—

Concealment of right of action. *See* Concealment of right of action by fraud, *ante*.

Future interests—

Accrual of right of action in case of future interests. *See* Land—Accrual of right of action in case of future interests, *post*.

Husband and wife—

Action for an account. *See* Action for an account—Meaning—Husband and wife, *ante*.

Property—

Claim under s 17 of Married Women's Property Act 1882. *See* Husband and wife (Property—Summary proceedings—Limitation of time).

Immigration appeal. *See* Immigration (Appeal—Time limit for appealing).

Interest on mortgage money—

Entitlement of mortgagee in redemption action to arrears of interest. *See* Mortgage (Redemption—Mortgagee's entitlement to arrears of interest).

Interrogatory—

Acknowledgment. *See* Acknowledgment—Interrogatory, *ante*.

Invalid marriage—

Concealment of right of action by fraud. *See* Concealment of right of action by fraud—Marriage contract—Invalid marriage, *ante*.

Joint tortfeasors. *See* When time begins to run—Joint tortfeasors, *post*.

Judgment—

Action on judgment. *See* Action on judgment, *ante*.

Land—

Accrual of right of action in case of future interests—

Estate or interest in reversion or remainder—Freeholder holding subject to a term of years—Squatter on demised land—Date at which freeholder's right of action against squatter deemed to accrue—Registered land—Limitation Act 1939, ss 6(1), 16—Land Registration Act 1925, s 75(1). *Fairweather v St Marylebone Property Co Ltd* [1962] 2 288, HL.

LIMITATION OF ACTION (cont)

Land (cont)—

Adverse possession—

Acts amounting to possession—Acts tending to prove possession of part of land—Acts tending to prove possession of part tending to prove possession of whole—Land not enclosed by wall or other physical barrier—Boundaries of land known and not in dispute—Whether acts tending to prove possession of part capable of proving possession of whole. **Higgs v Nassauvian Ltd** [1975] 1 95, PC.

Co-tenants—Devise of land in undivided shares—Co-tenants entitled to some only of the undivided shares were in exclusive possession of the whole land for over 20 years for their own benefit—Whether right of entry and right of action accrued on death of testator—Whether time ran notwithstanding possession of co-tenants was not wrongful—Real Property Limitation (No 1) Act 1833, s 3—Real Property Limitation (1874) Act, s 1. **Paradise Beach and Transportation Co Ltd v Price-Robinson** [1968] 1 530, PC.

Dispossession of true owner—Acts amounting to dispossession—Land held by owner for purpose of future property development—Owner having no immediate use for land—Land forming part of field belonging to farm—Land not fenced off from rest of field—Owner of farm using land as part of field for statutory period of limitation—Farm owner cutting grass, grazing cattle and on one occasion ploughing land—Whether acts amounting to dispossession of owner—Whether farm owner having enjoyed adverse possession for requisite period—Limitation Act 1939, ss 4(3), 5(1), 10(1). **Wallis's Cayton Bay Holiday Camp Ltd v Shell-Mex and BP Ltd** [1974] 3 575, CA.

Evidence—Equivocal acts—Blocking of public access to land used as hotel garden—Owners of hotel had rights to use garden as such—Whether acts of exclusion showed intention to exclude owner of garden land—Limitation Act 1939, s 4(3), s 10. **George Wimpey & Co Ltd v Sohn** [1966] 1 232, CA.

Foreshore—Requisites for establishing title against the Crown. **Fowley Marine (Emsworth) Ltd v Gafford** [1968] 1 979, CA.

Period of adverse possession—Decontrolled dwelling-house—No rent paid by tenant—Accrual of right of action—House again controlled—Limitation Act 1939, ss 9(2), 10(1), 16. **Moses v Lovegrove** [1952] 1 1279, CA.

Possession by oral licence for more than 12 years—Limitation Act 1939, ss 4(3), 5(3), 10(1). **Hughes v Griffin** [1969] 1 460, CA.

Purchaser paying purchase price and taking possession—No conveyance—Acquisition by purchaser of title by adverse possession—Person in whose favour the period of limitation can run—Limitation Act 1939, ss 9(1), 10(1). **Bridges v Mees** [1957] 2 577, ChD.

Seasonal tenancy—Tenancy granted by adverse possessor of field to tenant who, unknown to either party, had the documentary title to the freehold—User of field for cattle during winter months, when seasonal tenancy not current, not bringing adverse possession to an end—Mutual mistake—Seasonal tenancy extending also to other lands—Whether tenancy of field void—Whether adverse possessor established title by virtue of Limitation Act 1939, s 10(3). **Bligh v Martin** [1968] 1 1157, ChD.

Statutory tenant—Non-payment of rent—Accrual of right of action to recover land—Weekly tenancy granted to defendant—Defendant becoming statutory tenant of premises—Defendant subsequently ceasing to pay rent—No demand made for rent for period of 12 years—Whether statutory tenant in adverse possession—Whether statutory tenant capable of acquiring a possessory title against landlord—Limitation Act 1939, ss 9(2), 10(1). **Jessamine Investment Co v Schwartz** [1976] 3 521, CA.

Tenancy at will—Oral repetition of permission to stay some years after tenancy at will granted—Whether adverse possession thereby ended. **Hughes v Griffin** [1969] 1 460, CA.

Tenancy not in writing—No rent paid by tenant—Tenant incumbent of benefice—Land used as garden of glebe cottage—Succession to rights of corporation sole—Limitation Act 1939, ss 4(3), 9(2), 10. **Hayward v Challoner** [1967] 3 122, CA.

Co-owners—

Receipt of rent and profits by one co-owner—Co-owner trustee of legal estate—Real Property Limitation Act 1833, s 12—Law of Property Act 1925, s 12. **Re Landi** [1939] 3 569, CA.

Discontinuance of possession—

Dispossession—Vacant land—Owners' intention to develop land in future—Owners' minor acts of use—Defendants' war-time cultivation and subsequent use for greyhound breeding—Limitation Act 1939, s 5(1). **Williams Bros Direct Supply Stores Ltd v Raftery** [1957] 3 593, CA.

Land held in undivided shares before 1926—

Mortgage—Statutory trusts—Proceeds of sale—Whether claim of mortgagees barred—Real Property Limitation Act 1874, s 8—Law of Property Act 1925, s 35, Sch I, Part IV, para 1(4). **Re Milking Pail Farm Trusts** [1940] 4 54, ChD.

Recovery—

Action within 12 years from date on which right of action accrued—Date on which right of action accrued—Tenancy agreement to let cottage and shed—Tenant quitting cottage but retaining possession of shed—No rent paid for 17 years—Landlord's right to recover possession of shed barred—Limitation Act 1939, ss 4(3), 9(2). **Mason v Warlow** [1941] 1 475, CA.

Action within 12 years next after right to make entry or right of action accrued—Date when right of entry accrued—Contract for sale of land—Purchase price payable in quarterly instalments—Purchaser in possession—Default in payment of instalments—On default for specified period vendor having alternative remedies under contract—Right to enforce contract or to rescind contract and re-enter land—Whether right of entry accruing after lapse of specified period following default in payment or when vendor exercises option to rescind contract—Real Property Limitation Act 1874 (Fiji), s 1. **Lakshmijit v Sherani** [1973] 3 737, PC.

Sea-bed—Whether possession sufficiently exclusive—Limitation Act 1939, s 4(1), proviso. **Fowley Marine (Emsworth) Ltd v Gafford** [1967] 2 472, QBD.

LIMITATION OF ACTION (cont)

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Defence not subject to limitation period. *See* Shipping (Freight—Claim for freight—Defence—Cross-claim—Limitation period for cross-claim).

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Mistake—

Action for relief from consequences of mistake. *See* Postponement of limitation period—Action for relief from consequences of mistake, *post*.

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One common trustee—Receipt of rents for more than statutory period—Application by common trustee for benefit of first mortgagees in possession—Same hand to pay and receive. *Hodgson v Salt* [1936] 1 95, ChD.

Mortgage money—

Interest—

Entitlement of mortgagee in redemption action to arrears of interest. *See* Mortgage (Redemption—Mortgagee's entitlement to arrears of interest).

Negligence—

Concealment of right of action by fraud. *See* Concealment of right of action by fraud—Negligence, *ante*.

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Oral licence—

Possession by oral licence for more than 12 years. *See* Land—Adverse possession—Possession by oral licence for more than 12 years, *ante*.

Part payment—

Current account—

Payment made on account generally—Whether made in respect of balance on account—Limitation Act 1939, s 23(4). *Re Footman Bower & Co Ltd* [1961] 2 161, ChD.

Period of limitation—

Personal injury claim—

Damages for negligence, nuisance or breach of duty—Damages consisting of or including damages in respect of personal injuries—In respect of—Meaning—Contract between plaintiff and defendants whereby defendants to effect insurance cover on vehicle on behalf of plaintiff—Defendants failing to effect adequate cover—Plaintiff injured when vehicle involved in accident—Plaintiff unable to obtain compensation for injuries from insurers—Action against defendants for damages for breach of contract more than three and less than six years after cause of action accrued—Whether an action for damages consisting of or including damages in respect of personal injuries—Whether action statute-barred—Limitation Act 1939, s 2(1) (as amended by the Law Reform (Limitation of Actions, etc) Act 1954, s 2(1)). *Ackbar v C F Green & Co Ltd* [1975] 2 65, QBD.

Personal injury claim—

Action for damages—

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Persons under disability—

Custody of parent—

Capacity to manage own affairs—Plaintiff rendered unconscious and unable to manage his own affairs from date of accident until issue of writ—Plaintiff living with his mother—Writ issued more than three years after date of accident—Whether plaintiff of 'unsound mind'—Whether 'in custody of a parent'—Limitation Act 1939, ss 2(1) proviso, 22(2)(b), 31(2) (as amended by the Law Reform (Limitation of Actions, &c) Act 1954, ss 2(1)(2)(b), 8(3)). *Leather v Kirby* [1965] 3 927, HL.

Child in care of local authority—Whether in custody of parent—Limitation Act 1939, s 22(2)(b)—Law Reform (Limitation of Actions, &c) Act 1954, s 2(2). *Duncan v London Borough of Lambeth* [1968] 1 84, QBD.

Effective care and control—Capacity of parent to exercise effective care and control—Infant living with parents at time when cause of action accrued—Parents incapable of exercising adequate care or control over infant—Whether quality of care and control exercised by parents relevant in determining issue of custody—Limitation Act 1939, s 22(2)(b), (as amended by the Law Reform (Limitations of Actions, &c) Act 1954, s 2(2)). *Todd v Davison* [1971] 1 994, HL.

15 year old boy living and working on farm away from parents and financially independent on agricultural wages—Whether in custody of parent—Limitation Act 1939, s 22(2)(b), (as amended by the Law Reform (Limitation of Actions, &c) Act 1954, s 2(2)). *Hewer v Bryant* [1969] 3 578, CA.

LIMITATION OF ACTION (cont)

Persons under disability (cont)—

Custody of parent (cont)—

Legitimated son—Right of action for personal injuries accruing to infant 18 years old, economically independent and free to live where he chose but residing with parents—Father declining to apply for legal aid to act as next friend—Writ issued more than three years after right of action accrued, plaintiff having attained 21—Whether plaintiff was in the custody of a parent at the time of the accident—Limitation Act 1939, s 22(2)(b)—Law Reform (Limitation of Actions, &c) Act 1954, s 2(2). **Brook v Hoar** [1967] 3 395, QBD.

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Statute. *See* Statute—Pleading, *post*.

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Claim for account—Underpayment of money due under contract—Whether 'action for relief from consequences of a mistake'—Limitation Act 1939, s 26(c). **Phillips-Higgins v Harper** [1954] 2 51, CA.

Fraud. *See* Concealment of right of action by fraud, *ante*.

Proceeding against Crown—

Revival of cause of action—

Cause of action statute barred before commencement of Crown Proceedings Act 1947—Whether cause of action revived by Crown Proceedings Act 1947, s 1. **Benson v Home Office** [1949] 1 48, KBD.

Public authority—

Harbour board. *See* **Singapore** (Public authority—Limitation of action—Harbour board).Public authority. *See* Public authority (Limitation of action).Recovery of land. *See* Land—Recovery, *ante*.

Recovery of rent—

Evacuation area. *See* **Emergency legislation** (Evacuation area—Recovery of rent—Limitation of action).

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Set-off or counterclaim—

Set-off or counterclaim deemed to be subject of separate action—

Cross-claim arising out of same transaction as claim—Cross-claim in respect of damage other than that resulting in reduction of value of goods sold or work done—Whether cross-claim a defence to action for price or other remuneration—Whether cross-claim a set-off or counterclaim deemed to be the subject of a separate action—Limitation Act 1939, s 28. **Henriksens Rederi A/S v P H Z Rolimpex** [1973] 3 589, CA.

Setting aside—

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Specialty—

Right of action conferred by statute—

Period of limitation—Civil Procedure Act 1833, s 3. **Pratt v Cook, Son & Co (St Paul's) Ltd** [1940] 1 410, HL.

Statement of claim—

Amendment. *See* **Statement of Claim** (Amendment—Limitation of Action).

Cause of action accruing before statutory period—

Possibility plaintiff pleading exceptions to statute. *See* **Statement of Claim** (Striking out—Limitation period—Statement of claim showing cause of action accruing before statutory period).

Statute—

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Limitation period under Limitation Act 1623, expiring in 1938—Whether Limitation Act 1939, should be pleaded in action after 1939. **Rhyl Urban District Council v Rhyl Amusements Ltd** [1959] 1 257, ChD.

Sum recoverable by virtue of an enactment—

Specialty—

Action on statute—Whether period of limitation six years or 12 years—Limitation Act 1939, s 2(1)(d)(3). **Central Electricity Generating Board v Halifax Corp'n** [1962] 3 915, HL.

Time limit—

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Trespass to the person—

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Causes of action pleaded in negligence and alternatively in trespass—Whether claim in trespass was an action for 'breach of duty' for which limitation period reduced to three years by Law Reform (Limitation of Actions, &c) Act 1954, s 2(1). **Letang v Cooper** [1964] 2 929, CA.

Intentional trespass causing personal injuries—Whether claim for trespass was an action for 'breach of duty' statute barred by lapse of three years—Limitation Act 1939, s 2(1)(a), (as amended by proviso added by Law Reform (Limitation of Actions, &c) Act 1954, s 2(1)). **Long v Hepworth** [1968] 3 248, QBD.

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Father vesting shares in children—Subsequent dealing with shares and proceeds of sale of shares for his own benefit. *Shephard v Cartwright* [1954] 3 649, HL.

Payment by trustee to innocent third party—Whether third party can rely on any period of limitation—When time begins to run in favour of third party—Limitation Act 1939, ss 19(1)(a)(2), 26(a)(b). *G L Baker Ltd v Medway Building and Supplies Ltd* [1958] 3 540, CA.

Occupation of trust property by trustee—

Liability to account for rents and profits—Application of period of limitation—Limitation Act 1939, s 19(1)(b). *Re Howlett (decd)* [1949] 2 490, ChD.

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Accrual of cause of action—When serious harm suffered—Pneumoconiosis—Injury caused by acts outside statutory period—Injury first discovered within statutory period—Disability within statutory period—Limitation Act 1939, s 2(1)(a). *Cartledge v E Jopling & Sons Ltd* [1963] 1 341, HL.

Injury caused by acts outside statutory period—Injury first discovered within statutory period—Limitation Act 1939, s 2(1)(a). *Archer v Catton & Co Ltd* [1954] 1 896, Assizes.

Plaintiff unaware of presence of serious disease—Writ issued six years after breach of statutory duty—Presence of disease not discovered until shortly before writ issued—Whether writ issued out of time—Limitation Act 1939, s 2(1)(a). *Cartledge v E Jopling & Sons Ltd* [1963] 1 341, HL.

Pneumoconiosis contracted by workman—Disease probably initially contracted through breaches of statutory duty outside period of limitation—Materially aggravated by breaches within period of limitation—Limitation Act 1939, s 2(1)(a). *Clarkson v Modern Foundries Ltd* [1958] 1 33, Assizes.

Actions of tort—

Accrual of cause of action—Negligence—Damage—Lapse of time between negligent act and occurrence of damage—Action against local authority for breach of duty to secure compliance with building byelaws—Construction of house—Authority approving house with defective foundations—Action brought by purchaser of house—Purchaser not discovering defective condition of house until three years after purchase—Damage occurring when purchaser discovered or ought reasonably to have discovered defect—Accrual of cause of action at that date—Writ issued by purchaser within six years of discovering cracks in brickwork due to defective foundations but more than six years after inspection and approval of house by local authority—Action not statute-barred—Limitation Act 1939, s 2(1)(a). *Sparham-Souter v Town and Country Developments (Essex) Ltd* [1976] 2 65, CA.

Accrual of cause of action—Negligence—Damage—Lapse of time between negligent act and occurrence of principal damage—Construction of house—Defective foundations—Wet rot subsequently developing—Action brought within six years of discovery of wet rot but more than six years after original sale with defective foundations—Whether period of limitation running from time of original sale or discovery of wet rot—Limitation Act 1939, s 2(1). *Higgins v Arfon Borough Council* [1975] 2 589, QBD.

Computation of limitation period—Exclusion of day of accident. *Seabridge v H Cox & Sons (Plant Hire) Ltd Barclay v Same* [1968] 1 570, CA.

Computation of limitation period—Whether day of event causing injuries excluded—Limitation Act 1939, s 2(1)—Law Reform (Limitation of Actions, &c) Act 1954, s 2(1). *Marren v Dawson Bentley & Co Ltd* [1961] 2 270, Assizes.

Computation of limitation period—Whether day of event causing injuries excluded—Limitation Act 1939, s 2(1) (as amended by the Law Reform (Limitation of Actions, etc) Act 1954, s 2(1)). *Pritam Kaur v S Russell & Sons Ltd* [1973] 1 617, CA.

Detinue—Date of accrual of action—Car stolen by unknown person—Discovery in hands of innocent purchaser for value—Action for recovery brought seven years after theft—Limitation Act 1939, ss 2(1), 3(1). *R B Policies at Lloyd's v Butler* [1949] 2 226, KBD.

Joint tortfeasors—

Contribution—Third party claim against driver—Claim not made within 12 months of negligent act but made within 12 months of judgment against defendant—Third party not liable for contribution—Law Reform (Married Women and Tortfeasors) Act 1935, s 6(1)(c)—Limitation Act 1939, s 2(1). *Merlihan v A C Pope Ltd and J W Hibbert (John Pagnello, third party)* [1945] 2 449, KBD.

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International carriage. *See* **Carriage by air** (Carriage of passengers—International carriage—Limitation of carriers' liability).

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- Delivery of gift by donor with intention that donee should receive as a gift—
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Corruption of officer or employee. *See* **Criminal law** (Corruption).

Crowd control—

Premises open to public—

Danger from rush of people—Duty to institute crowd control. *See* **Negligence** (Duty to take care—Premises open to public—Danger from rush of people—Duty to institute crowd control—Local authority).

Discovery—

Powers—

Canada. *See* **Canada** (Local government—Local authority—Powers of discovery).

Disqualification for office as member of local authority—

Office in gift or disposal of local authority—

Assistant schoolmaster—Local Government Act 1933, s 59(1)(a). **Lamb v Jeffries** [1956] 1 317, QBD.

Head teacher—Appointments to office of head teacher to be made by joint committee of which half the members were appointed by the local authority—Local Government Act 1933, s 59(1)(a). **Boyd v Easington Rural District Council** [1963] 3 747, ChD.

Education. *See* **Education** (Local education authority).

Facilities for disabled persons—

Structures—

Rating relief—Structures of a similar kind to those provided by authority. *See* **Rates** (Structures supplied for use of invalids, disabled or handicapped persons—Structure supplied for use of person in pursuance of arrangements for after-care of any person suffering from illness—Structure of a kind similar to structures which could be provided by local authority or voluntary organisations).

LOCAL AUTHORITY (cont)

- Gift of property—
 - Power to accept—
 - Charitable trust—Eleemosynary charity. *See* **Charity** (Charitable trust—Eleemosynary charity—Local authority).
- Guardianship of minors—
 - Evidence. *See* **Minor** (Guardianship—Evidence—Production of records and giving of evidence by adoption society or local authority).
- Hackney carriage—
 - Grant of licence—
 - Duty to act fairly. *See* **Road traffic** (Hackney carriage—Licence—Grant of licence—Natural justice—Duty of licensing authority to act fairly).
- Highway and bridge authority—
 - Notification of abnormal indivisible load. *See* **Road traffic** (Heavy motor car—Abnormal indivisible load—Notification to highway and bridge authority).
- Highway authority. *See* **Highway** (Highway authority).
- Hospitals vested in local authority—
 - Transfer to Minister of Health. *See* **National health service** (Transfer of hospital to Minister—All hospitals vested in local authority).
- Housing. *See* **Housing**.
- Income tax—
 - Deduction of tax. *See* **Income tax** (Annual payment—Deduction of tax—Local authority).
- Injunction—
 - Inability of authority to comply with injunction. *See* **Injunction** (Compliance outside defendant's control—Local authority).
- Interest on loan—
 - Income tax—
 - Deduction in computing profits. *See* **Income tax** (Deduction in computing profits—Local authority—Interest on loans on security of general rate fund).
- Land—
 - Open space—
 - Disposal—Trust to administer open space for enjoyment of public—Power to sell open space—Open Spaces Act 1906, s 10—Local Government Act 1933, ss 165, 179. *Laverstock Property Co Ltd v Peterborough Corpn* [1972] 3 678, ChD.
 - Power to appropriate. *See* **Land**—Power to appropriate land—Land forming part of common, open space or fuel or field garden allotment, *post*.
 - Power to appropriate land—
 - Authorisation—Procedure—Common. *See* **Compulsory Purchase** (Authorisation—Procedure—Common).
 - Exercise of power—Consent of Minister—Land acquired by authority in exercise (directly or indirectly) of compulsory powers—Acquisition of land for purposes of airfield—Authority prepared to acquire land compulsorily if necessary—Compulsory purchase order made but not confirmed—Agreement with owner for purchase of land instead—Authority subsequently resolving to appropriate land for other purposes—Whether land having been acquired in the exercise (directly or indirectly) of compulsory powers—Whether consent of Minister to subsequent appropriation necessary—Town and Country Planning Act 1959, ss 23(2)(b), 30(5). *Dowty Boulton Paul Ltd v Wolverhampton Corporation* (No 2) [1973] 2 491, CA.
 - Land forming part of common, open space or fuel or field garden allotment—Open space—
 - Appropriation for planning purposes—Land held by authority on trust as open space—Land having been built on—Land *de facto* having ceased to be open space—Whether power exercisable if land held for purposes of an open space—Town and Country Planning Act 1971, s 121(1). *Third Greytown Properties Ltd v Peterborough Corpn* [1973] 3 731, ChD.
 - Land no longer required for purpose for which acquired—Decision of local authority that land no longer required for those purposes—Jurisdiction of courts to review decision—Local authority acquiring land for purposes of aerodrome—Local authority conveying site adjoining land to plaintiffs to build factory—Plaintiffs aircraft manufacturers—Conveyance containing covenant by local authority to allow plaintiffs to use airfield for defined period for purposes of test, delivery and other flights in connection with their business—Local authority deciding that land no longer required for purposes of aerodrome—Resolution to appropriate land for purposes of housing scheme—Validity of resolution—Whether test flights, etc of plaintiffs' aircraft a purpose for which land acquired—Whether court having jurisdiction to review local authority's decision that land no longer required for original purposes—Local Government Act 1933, s 163(1). *Dowty Boulton Paul Ltd v Wolverhampton Corpn* (No 2) [1973] 2 491, CA.
- Power to demise land—
 - Failure to obtain consent of Ministry of Health—Validity of lease—Ultra vires—Estoppel—Effect of invalidity of lease on surrender made in consideration of the grant of the lease—Public Health Act 1875, s 177—Rhyl Improvement Act 1892, s 43. *Rhyl Urban District Council v Rhyl Amusements Ltd* [1959] 1 257, ChD.
- Power to sell land—
 - Land subject to charitable trust—Statutory power—Whether power to dispose of land subject to charitable trust—Local Government Act 1933, s 165. *Hauxwell v Barton-upon-Humber Urban District Council* [1973] 2 1022, ChD.
- Libel—
 - Right to sue for libel. *See* **Libel and slander** (Parties—Right to sue—Corporation—Local government corporation).
- Licence—
 - Agency for supply of nurses. *See* **Nurse** (Agency for supply of nurses—Licence by local authority).
- Meetings—
 - Admission of public. *See* **Public authority** (Meeting—Admission of public).

LOCAL AUTHORITY (cont)

Meetings (cont)—

Disability of members of authorities for voting on account of pecuniary interest in contracts etc—

Exception—Interest relating to terms on which right to participate in service offered to public—Tenants of council—Question relating to rent of council houses—Whether housing a 'service'—Local Government Act 1933, s 76(1). **Brown v Director of Public Prosecutions** [1956] 2 189, QBD.

Pecuniary interest in any contract or other matter—Direct and indirect interest—Discussion on council's policy regarding tenders for building contracts—Councillor managing director and shareholder of building company which did not intend to tender but had tendered in the past—Local Government Act 1933, s 76(1),(2). **Rands v Oldroyd** [1958] 3 344, QBD.

Generally. *See* **Local government** (Meeting).

Member—

Disability for voting at meetings. *See* Meetings—Disability of members of authorities for voting on account of pecuniary interest in contracts etc, *ante*.

Disqualification for office. *See* Disqualification for office as member of local authority, *ante*.

Expenses. *See* **Local government** (Expenses—Members of council).

Mental defective—

Responsibility for providing accommodation. *See* **Mental health** (Mental defective—Local authority responsible for providing accommodation).

Minutes—

Inspection. *See* **Local government** (Documents—Inspection—Minutes of local authority).

Mortgage—

Power of sale. *See* **Mortgage** (Sale—Exercise of power of sale by mortgagee—Local authority).

New tenancy—

Business premises—

Landlord local authority. *See* **Landlord and tenant** (Business premises—Application for new tenancy—Landlord local authority).

Notice—

Housing. *See* **Housing** (Notice from local authority).

Nuisance—

Exercise of statutory powers—

Remedy. *See* **Nuisance** (Local authority—Exercise of statutory powers—Remedy).

Injunction—

Form of order. *See* **Injunction** (Form of order—Nuisance—Local authority).

Sewage—

Pollution of river by sewage. *See* **Nuisance** (Sewage—Local authority's liability—Pollution of river by sewage).

Statutory nuisance. *See* **Nuisance** (Statutory nuisance).

Occupier's liability—

Occupation of house compulsorily acquired. *See* **Occupier's liability** (Occupation—Local authority).

Officer or employee—

Corruption. *See* **Criminal law** (Corruption).

Open space—

Power to erect building on open space—

Caretaker's lodge—Extent of power—Calculation of area withdrawn from public purposes—Public Health Act 1875, s 164—Poole Corporation Act 1919, ss 39, 40, 88. **Attorney-General v Poole Corpn** [1937] 3 608, CA.

Trust to administer open space for enjoyment of public—

Disused burial ground—Churchyard converted into open space for benefit of parish—Monument—Proposal to erect monument in open space—Monument unconnected with parish and politically controversial—Monument taking up large part of open space—Whether erection of monument by local authority a breach of trust—Open Spaces Act 1906, s 10. **Re St Luke's, Chelsea** [1976] 1 609, Con Ct.

Opposition to grant of new tenancy of business premises—

Intention to demolish or reconstruct. *See* **Landlord and tenant** (Opposition to grant of new tenancy of business premises—Intention of landlord to demolish or reconstruct premises comprised in holding—Local authority landlord).

Power—

Discovery—

Canada. *See* **Canada** (Local government—Local authority—Powers of discovery).

Powers—

Misuse of powers—

Application to prevent misuse of local authority's powers—Locus standi of applicant. *See* **Prohibition** (Locus standi of applicant—Application to prevent local authority from misusing powers).

Privilege—

Production of documents. *See* **Discovery** (Privilege—Local authority).

Property—

Reorganisation of local government—

Vesting of property in newly constituted authorities—More than one authority succeeding to different functions of former authority—Land held by former authority for two or more purposes—Determination by former authority that land used mainly for one purpose—Building used for purposes of fire service and library—Building one of number on fire station site—Remaining buildings on site used solely for purposes of fire service—Determination that building used mainly for library purposes—Validity of determination—Whether building or fire station site as a whole 'any land used for two or more purposes' London Authorities (Property etc) Order 1964 (SI 1964 No 1464), art 4(1). **Greater London Council v London Borough of Croydon** [1971] 2 906, ChD.

LOCAL AUTHORITY (cont)

- Public transport. *See* **Road traffic** (Public transport—Local authority).
- Rates. *See* **Rates**.
- Registration officer—
 - Superannuation. *See* **Local government** (Superannuation—Interim registrar of births and deaths).
- Rehousing—
 - Duty to rehouse persons displaced from residential accommodation. *See* **Housing** (Rehousing—Duty of local authority—Persons displaced from residential accommodation).
- Rent control—
 - Reference of contract to rent tribunal. *See* **Rent tribunal** (Reference of contract—Jurisdiction—Reference by local authority).
- Report to appropriate council—
 - Statutory duty—
 - Effect of entering defamatory material in report. *See* **Libel and slander** (Qualified privilege—Duty and interest—Statutory duty—Report of committee to borough council).
- Representation by Treasury Solicitor—
 - Appeal concerning validity of traffic order—
 - Interest of Crown in subject-matter of litigation—Whether representation proper. **Brownsea Haven Properties Ltd v Poole Corpn** [1958] 1 205, CA.
- Right of action—
 - Assertion and protection of rights of public. *See* **Practice** (Parties—Local authority).
 - Protection of interest of inhabitants of area—
 - Unlawful closure of railway line—Interim injunction—Local Government Act 1933, s 276. **Warwickshire County Council v British Railways Board** [1969] 3 631, CA.
- Right of pre-emption—
 - Right imposed by local authority on sale of house—
 - Obligation affecting land—Registration. *See* **Land charge** (Registration—Obligation affecting land—Obligation binding on successors in title—Right of pre-emption—Local authority).
- Seal—
 - Contract—Necessity for seal. *See* **Contract**—Seal—Necessity for seal, *ante*.
- Sewers—
 - Provision of public sewers. *See* **Public health** (Sewerage—Provision of public sewers).
- Signature—
 - Document. *See* **Local government** (Documents—Signature).
- Standing orders—
 - Contract in accordance with standing orders. *See* **Contract**—Accordance with standing orders, *ante*.
 - Power to suspend—
 - Exercise of power only by special resolution. **R v Hereford Corpn, ex parte Harrower** [1970] 3 460, QBD.
- Statutory duty—
 - Enforcement—
 - Accommodation—Duty to provide accommodation for persons in urgent need—Scope of duty—Remedy for breach of duty—Specific remedy provided for by statute—Exclusion of other remedies—Homeless family—Occupation by homeless family of empty property owned by local authority—Whether local authority in breach of duty to provide accommodation for homeless—Whether breach of duty justifying occupation of property—National Assistance Act 1948, s 21(1)(b). **London Borough of Southwark v Williams** [1971] 2 175, CA.
 - Enforcement. *See* **Mandamus** (Discretion—Local authority—Statutory duty).
- Statutory powers—
 - Duty to take care in exercising powers. *See* **Negligence** (Duty to take care—Statutory powers—Local authority).
 - Interference with flow of water to mill. *See* **Water and watercourses** (Flow of water—Mill deriving water power from river—Interference with flow of water by local authority executing works under statutory powers).
- Tramway. *See* **Tramway**
- Transport—
 - Free pass—
 - Exclusion of liability for negligence. *See* **Carriers** (Negligence—Exclusion of liability—Passengers—Free pass).
 - Travel concessions—
 - Free travel facilities for aged persons—Discrimination in favour of class—Whether ultra vires. **Prescott v Birmingham Corpn** [1954] 3 698, CA.
 - Local authority running public services in area of another local authority—Contribution to cost—Basis of calculation—Public Service Vehicles (Travel Concessions) Act 1955, s 1(4). **Litherland Urban District Council v Liverpool Corpn** [1958] 2 489, ChD.
- Wardship proceedings—
 - Minor in care of local authority—
 - Parties. *See* **Ward of court** (Application to make minor ward of court—Parties—Respondent where minor in care of local authority).
- Water charges—
 - Recovery of charges on behalf of water authority—
 - Sewerage services. *See* **Water supply** (Charges—Power of water authority to make charges—Charges for services performed—Liability of person who has not received services—Sewerage services—Transitional provisions—Power of Secretary of State to authorise local authority to calculate, collect and recover charges for services provided by water authority for transitional period).
- Water supply—
 - Works vesting in local authority. *See* **Water supply** (Local authority—Works used for gratuitous supply of water to inhabitants of district vested in local authority).

LOCAL AUTHORITY (cont)

Weekly tenancy—

- Implied covenant by landlord to repair. *See* **Landlord and tenant** (Implied covenant to repair—Covenant by landlord—Flat let on weekly tenancy by local authority).

LOCAL CHARITY

Action to establish existence of charitable trust—

Parties—

- Local inhabitants—Attorney-General. *See* **Charity** (Proceedings—Parties—Attorney-General—Local charity).

LOCAL EDUCATION AUTHORITY*See* **Education** (Local education authority).**LOCAL GOVERNMENT**

Alteration of area—

Extension of city boundaries to include part of county area—

- Loss to county ratepayers—Whether city council liable to compensate county council—Local government Act 1888, s 62—Local Government Act 1894, s 68 Sch 1 Part 11—Local Government (Adjustments) Act 1913, s 1(1)(b)—Local Government (County Borough and Adjustments) Act 1926, s 5—Oxford Extension Act 1928, ss 33 61—Local Government Act 1929, ss 30. **Oxford City Council v Oxfordshire County Council** [1938] 4 721, HL.

Extension of county borough boundaries to include part of administrative county area—

- Financial adjustments—Claims presented by county council against corporation of borough more than six years after alteration of areas—Limitation of time—Date from which time runs—Local Government Act 1933, s 151(1)(3)—Limitation Act 1939, ss 2(1)(d), 27(1)(6). **West Riding of Yorkshire County Council v Huddersfield Corp** [1957] 1 669, QBD.

Extension of county borough to include part of county area—

- Financial adjustments—Increased burden on county ratepayers—Method of assessing compensation—Arbitrator's duty—Interest on amount awarded—Local Government Act 1933, ss 151, 152(1)(b), Sch V, r 1—Newport Extension Act 1934, s 58. **Newport Borough Council v Monmouthshire County Council** [1947] 1 900, HL.

Extension of county borough boundaries to include parts of rural districts—

- Loss to rural district ratepayers—Abolition of rural district councils affected and districts amalgamated—Right of new rural district council to financial adjustment with county borough—Local Government Act 1933, s 152(1)(b), Sch V, r 1(a). **Magor and St Mellons Rural District Council v Newport Corp** [1951] 2 839, HL.

Financial adjustments—

- Settlement—Capital sum plus interest, less tax—Transaction treated by income tax authorities as capital payment—Tax deducted not accounted for—Claim to recover tax deducted—Whether settlement could be re-opened. **Bullington Rural District Council v Oxford Corp** [1936] 3 875, KBD.

Order adjusting boundaries—

- Letter adjourning decision on amalgamation—Subsequent order for amalgamation of authorities—Whether second order barred—Local Government Act 1929, s 47(1). **R v Minister of Health, ex parte Hampton Urban District Council** [1936] 3 169, KBD.

Proposal—

- Objection by local authority—Action by local authorities on ground that inquiry invalid—Whether production of departmental briefs for guidance of inspectors and correspondence between inspectors and ministry necessary in interest of justice. **Wednesbury Corp v Ministry of Housing and Local Government** [1965] 1 186, CA.

- Objection by local authority—Local inquiry into objection—Minister giving instructions to holders of inquiry—No statutory obligation on persons holding the inquiry to express judgment on merits of the proposals—Holders of inquiry instructed by Minister not to make recommendations on matter on which by statute he was to decide—Right of Minister to give such instructions—Validity of inquiry—Local Government Act 1958, s 23(2). **Wednesbury Corp v Ministry of Housing and Local Government (No 2)** [1965] 3 571, CA.

- Objection by local authority—Local inquiry into objection—Action by local authorities on ground that inquiry invalid—Whether production of departmental briefs for guidance of inspectors and correspondence between inspectors and ministry necessary in interest of justice. **Wednesbury Corp v Ministry of Housing and Local Government** [1965] 1 186, CA.

Audit—

Duty of auditor to disallow item of account which contrary to law and to surcharge amount disallowed on person responsible—

- Contrary to law—Contract to dispose of refuse—Decision to increase remuneration of contractor—Whether payment in excess of those council contractually bound to pay 'contrary to law'—Local Government Act 1933, s 228(1). *Re the decision of C R H Hurlle-Hobbs, District Auditor* [1944] 2 261, CA.

Duty of auditor to surcharge amount of any loss or deficiency on any person by whose negligence or misconduct loss or deficiency incurred—

- Negligence—Local Government Act 1933, s 228(1)(d). **Pentecost v London District Auditor** [1951] 2 330, KBD.

- Negligence or misconduct—Loss or deficiency—Resolution authorising payment passed after warning by clerk that purpose of resolution unlawful—Whether councillors guilty of misconduct in passing resolution—Whether loss or deficiency caused by councillors' misconduct—Liability to be surcharged—Local Government Act 1933, s 228(1)(d). *Davies v Cowperthwaite* [1938] 2 685, KBD.

LOCAL GOVERNMENT

Audit—

Duty of auditor to surcharge amount of any loss or deficiency on any person by whose negligence or misconduct loss or deficiency incurred—

Negligence or misconduct—Loss or deficiency—Failure to increase revenue of authority—Local authority refusing to implement statutory duty to increase rents of council houses tenants—Refusal in consequence of pledge to electorate—Whether local authority guilty of 'negligence or misconduct'—Whether failure to increase rents resulting in a 'loss or deficiency'—Local Government Act 1933, s 228(1)(d). **Asher v Lacey** [1973] 3 1008, QBD.

Duty of auditor to disallow item of account which contrary to law and to surcharge amount disallowed on person responsible—

Rent on de-requisition—Council undertaking full cost of any increases under Rent Act 1957—Discretion of councillors not properly exercised—Surcharge properly made—Local Government Act 1933, s 228—Requisitioned Houses and Housing (Amendment) Act 1955, s 4(4). **Taylor v Munrow** [1960] 1 455, QBD.

Production of and declarations as to documents—

Statutory power of district auditor to compel witness to attend audit—Failure of witness to comply with notice to attend—Witness fined—Issue of subpoena ad testificandum and duces tecum—Jurisdiction—Whether auditor precluded from applying to court for issue of subpoena—Local Government Act 1933, s 225(1)(2). **R v Hurle-Hobbs, ex parte Simmons** [1945] 1 273, KBD.

Surcharge—

Appeal—Relief—Refusal by district auditor to surcharge—Appeal to Minister by aggrieved elector allowed—Consequent surcharge by district auditor pursuant to instructions of Minister—Appeal against such surcharge—Application for relief against such surcharge—Jurisdiction of High Court—Local Government Act 1933, ss 229, 230. **Dean v District Auditor for Ashton-in-Makerfield** [1959] 2 577, QBD.

Appeal—Right of appeal of person aggrieved by disallowance or surcharge—Auditor disallowing payments by council to contractor in excess of contractual sum—Appeal by contractor—Whether 'person aggrieved'—Local Government Act 1933, s 229(1). **Re the decision of C R H Hurle-Hobbs, District Auditor** [1944] 2 261, CA.

Application for relief—Circumstances to be considered by the court—Discretion of court to grant—Local Government Act 1933, s 230. **Annisson v District Auditor for the Metropolitan Borough of St Pancras** [1961] 3 914, QBD.

Powers of district auditor—Fraud by company—Surcharge on managing director—Local Government Act 1933, s 228. **Re Dickson** [1948] 1 713, CA.

Authority. *See* Local authority

Document—

Audit—

Production of and declarations as to documents. *See* Audit—Production of and declarations as to documents, *ante*.

Documents—

Inspection—

Accounts of local authority—Omnibus board constituted by local statute—Whether board a local authority—Provisions relating to accounts of local authority incorporated in local statute—Repeal of provisions of 1894 Act—Effect on local Act—Whether elector entitled to inspection of auditor's report on accounts of board—Interpretation of statutes—Local Government Act 1894, s 58—Local Government Act 1933, s 283(4). **R v West Monmouthshire Omnibus Board, ex parte Price** [1938] 1 220, KBD.

Inspection by councillor—Documents relating to pending litigation—Sufficient production for proper discharge of duties—Prejudice of council's interest by production. **R v Barnes Borough Council, ex parte Conlan** [1938] 3 226, KBD.

London. *See* London (Local government of documents).

Minutes of local authority—Matters involving accounts and finance—Inspection by agent of elector. **R v Glamorganshire County Council, ex parte Collier** [1936] 2 168, KBD.

Signature—

Facsimile signature—No evidence how signature affixed or with what authority document issued—Notice required to be signed by clerk or his lawful deputy—Document bearing purported signature deemed authoritatively given until contrary proved—Housing Act 1957, s 166(2)—Local Government Act 1933, s 287B added by London Government Act 1963, s 8(2) Sch 4. **Plymouth City Corp v Hurrell** [1967] 3 354, CA.

Elections. *See* Elections (Local government).

Expenditure—

Payment out of general rate fund—

Payment in respect of employment of valuer by rating authority—Whether ultra vires the rating authority—Local Government Act 1933, s 187(2). **Grainger v Liverpool Corp** [1954] 1 333, QBD.

Purchase of undertaking of omnibus company—Payment for goodwill—Ultra vires—Payment out of reverse fund of local authority's undertaking—Local Government Act 1933, ss 185—187—Leicester Corporation Act 1930, s 45(2)(b). **Attorney-General at the relation of Birmingham and Midland Motor Omnibus Co Ltd v Leicester Corp** [1943] 1 146, ChD.

Expenses—

Members of council—

Expenses necessarily incurred in travelling—Whether including expenses incurred for purpose of bodily subsistence while travelling—Local Government Act 1933, s 294(1). **Glamorgan County Council v Ayton** [1936] 3 210, KBD.

General rate fund—

Payment out of fund. *See* Expenditure—Payment out of general rate fund, *ante*.

Housing. *See* Housing.

LOCAL GOVERNMENT (cont)

Local taxation licences—

Distribution of proceeds between county and county borough—

Statutory provision for distribution of proceeds of licences and grants—Grants discontinued—Whether necessary for new agreement to be made as to distribution of proceeds of licences—Local Government Act 1929, s 85(5). **Liverpool Corpn v Lancashire County Council** [1936] 3 945, CA.

London. *See* **London** (Local government).

Meeting—

Parish meeting—

Poll—Question not put to vote—Whether poll demandable—Local Government Act 1933, Sch 3, Part 6, para 5(4). **Bennett v Chappell** [1965] 3 130, CA.

Voting—

Committee meetings—Prohibition on county councillor voting on matter involving expenditure on account of which district not liable to be charged—County councillor representing separate district for purposes of Maternity and Child Welfare Act 1918—Member of public health and housing committee of county council and of maternity and child welfare sub-committee—Right to vote at committee and sub-committee meetings—Local Government Act 1933, s 75. **Alderton v Essex County Council** [1937] 3 21, ChD.

Office—

Appointment—

Restriction—Members of local authority not to be appointed to paid office—Appointment of councillor as clerk to council in honorary capacity on his undertaking to resign from council—Whether 'paid office'—Local Government Act 1933, s 122. **Attorney-General v Ulverston Urban Council** [1944] 1 475, ChD.

Officer—

Compensation for loss of employment—

London Passenger Transport Board—Transfer of officer to Board. *See* **London Passenger Transport Board** (Transfer of officer or servant to board—Compensation of officer of company ceasing to exist on formation of board).

Long-term compensation—Assessment—Deduction—Factors to be considered—Prospects of other employment—Size of salary officer likely to command in other employment—Local Government (Compensation) Regulations 1963 (S I 1963 No 999), reg 14(1)(c)(f). **Myrddin-Baker v Teesside County Borough Council (No 2)** [1971] 1 567, QBD.

Resettlement and long-term compensation—Appeal to industrial tribunal of appeal to hear further evidence on appeal from compensating authority—Local Government (Compensation) Regulations 1963 (S I 1963 No 999), regs 14(1), 38(1), 43(3). **Myrddin-Baker v Teesside County Borough Council** [1970] 1 1108, QBD.

Resettlement compensation—Assessment—Deduction—Net emoluments received from work or employment in place of employment lost—Part only of salary to which entitled in new employment paid—Local Government (Compensation) Regulations 1963 (S I 1963 No 999), reg 8(1). **Myrddin-Baker v Teesside County Borough Council (No 2)** [1971] 1 567, QBD.

Loss of employment—

Ill-health—Payment of gratuity to employee—Resolution to grant—Enforceability by employee—Resolution to pay gratuity in weekly instalments—Whether decision vires—Poplar Borough Council Superannuation and Pensions Act 1911, s 8(2). **Holloway v Poplar Borough Council** [1939] 4 165, KBD.

Remuneration—

Children's allowances—Fair and reasonable—Discretion of local authority—Local Government Act 1933, ss 106, 228, 229, 230. *Re* **Decision of Walker** [1944] 1 614, CA.

Reduction—Sickness—Poor law relieving officer—Contract of service—Recovery of pay—Regulations of council relating to sick pay—Public Authorities Protection Act 1893, s 1—Public Assistance Order 1930 (S R & O 1930 No 185), arts 142(1), 162. **Compton v West Ham County Borough Council** [1939] 3 193, ChD.

Reduction—Sickness—Poor-law relieving officer—Contract of service—Clause relating to sick pay—Public Assistance Order 1930 (S R & O 1930 No 185), art 162. **Littlejohn v London County Council** [1937] 3 43, CA.

Transferred officer—Rate collector—Amalgamation of districts. **Cowan v Ennerdale Rural District Council** [1936] 3 684, Assizes.

War time. *See* **Emergency legislation** (Local government—Remuneration of officer).

Transferred officer—

Compensation—Emoluments for which compensation granted—Increases of salary in new employment—Power to review compensation—Local Government Act 1929, s 123, Sch VIII, para 14. **Dodds v Durham County Council** [1950] 2 1090, Assizes.

Public utility undertaking—

Reserve fund—

Application of fund—Relief of unemployed. **Attorney-General v Oldham Corpn** [1936] 2 1022, ChD.

Reorganisation—

Vesting of property in newly constituted authorities. *See* **Local authority** (Property—Reorganisation of local government).

Superannuation—

Assessment of allowance—

Area public assistance officer acting also as interim superintendent registrar of births and deaths—Inclusion of fees as registrar in calculation of average remuneration—Calculation to be based on gross fees—Local Government Superannuation Act 1937, ss 8(2)(5)(c), 40(1)(3). **Jobbins v Middlesex County Council** [1948] 2 610, CA.

LOCAL GOVERNMENT (cont)

Superannuation (cont)—

Assessment of allowance (cont)—

Remuneration of borough treasurer acting as local fuel overseer—Superannuation rights regulated by local Act—Local Government Superannuation Act 1937, s 40(3), not applicable to employees of local Act authorities—Employment not to be treated as two separate employments—'Officer'—'Emoluments'—Paddington Borough Council (Superannuation and Pensions) Act 1911, ss 3, 4, 5, 13—London County Council (General Powers) Act 1928, Part VII—Local Government Superannuation Act 1937, ss 1, 3, 8, 26, 40(3)—Local Government Superannuation (Administration) Regulations, 1938 (S R & O 1938 No 574), art 4—Fuel and Lighting Order 1939 (S R & O 1939 No 1028), art 16(1)—Paddington Borough Council Superannuation Scheme 1938, arts 4, 13(2), 15. **Re an arbitration between Wickham and the Mayor, Aldermen and Burgesses of the Metropolitan Borough of Paddington** [1946] 2 68, KBD.

Decision of claim by authority concerned—

Authority concerned—Scheme administered by county council—Employees of rural district council entitled to participate—Claim to annual superannuation allowance by former employee of rural district council—Claim admitted by rural district council, but rejected by county council—Local Government Superannuation Act 1937, ss 8, 35. **Walter v Eton Rural District Council** [1950] 2 588, CA.

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Desirability of uneven number of justices. *Barnsley v Marsh* [1947] 1 874, KBD.

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Accused arriving at court-house with over 20 supporters—Only seats for five members of the public in courtroom—Five supporters occupying the five seats—Five supporters interrupting proceedings shortly after start of hearing—Five having to leave courtroom as a result—Five seats remaining empty for rest of hearing—Member of press present during hearing—Whether hearing in 'open court'—Magistrates' Courts Act 1952, s 98(4). *R v Denbigh Justices, ex parte Williams* [1974] 2 1052, QBD.

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Admissibility—Employers' letter showing arrangements for employee litigant to go abroad on business—Receivable on application for adjournment—Evidence Act 1938, s 1. **Walker v Walker** [1967] 1 412, Div.

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Inquiry as to means—Money Payments (Justices Procedure) Act 1935, ss 1, 11. **R v Woking Justices, ex parte Johnstone** [1942] 2 179, KBD.

National insurance contributions and fine—Whether sum enforceable as a civil debt for the purpose of fixing the maximum period of committal in default of payment—Magistrates' Courts Act 1952, s 64(3), Sch 3, para 4. **R v Marlow (Bucks) Justices, ex parte Schiller** [1957] 2 783, QBD.

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Obligation of English magistrate to indorse warrant—

Offence in Republic of Ireland triable only on indictment—In England triable summarily or on indictment—Whether offence alleged corresponded with English offence—Whether magistrate must be satisfied *prima facie* case made out—Backing of Warrants (Republic of Ireland) Act 1965, s 1(1), s 2(2), Sch, para 3. **Re Arkins** [1966] 3 651, QBD.

Order for return—

Likelihood of prosecution or detention for another offence—Offence of political character—'Another offence'—Backing of Warrants (Republic of Ireland) Act 1965, s 2(2)(b). **Keane v Governor of Brixton Prison** [1971] 1 1163, HL.

Refusal to make order—Likelihood of prosecution or detention for another offence—Offence of a political character—Evidence that offence of a political character—Trial for offence in Irish special court—Court established because Irish government of view that ordinary courts inadequate to secure effective administration of justice—Applicant convicted of armed robbery by special court—Applicant sentenced to imprisonment—Applicant escaping from prison and arrested in United Kingdom—Applicant arrested under Irish warrant—Whether applicant likely to be detained for an 'offence of a political character'—Whether trial in special court showing that robbery was an 'offence of a political character'—Backing of Warrants (Republic of Ireland) Act 1965, s 2(2)(b). **R v Governor of Winson Green Prison, Birmingham, ex parte Littlejohn** [1975] 3 208, QBD.

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Inquiry—Whether inquiry into existence of *prima facie* case necessary. **Keane v Governor of Brixton Prison** [1971] 1 1163, HL.

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New offence—Time limit for laying information—Amendment outside limitation period—Amendment substituting new offence—Discretion of justices to allow amendment—No injustice to defendant—Notice of facts served on defendant with original summons—Facts constituting new offence fully disclosed in notice—Whether permissible for justices to allow amendment substituting new offence outside limitation period—Magistrates' Courts Act 1952, s 104. **R v Newcastle-upon-Tyne Justices, ex parte John Bryce (Contractors) Ltd** [1976] 2 611, QBD.

Three offences charged in one information—Accused charged with one offence only at hearing—Amendment of information allowed after commencement of trial—Whether jurisdiction to try accused or to amend information—Magistrates' Courts Rules 1952 (SI 1952 No 2190), r 14. **Hargreaves v Alderson** [1962] 3 1019, QBD.

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No offence disclosed—Information void *ab initio*—Poaching Prevention Act 1862, s 2—Magistrates' Courts Act 1952, s 100(1). **Garman v Plaice** [1969] 1 62, QBD.

Statement of offence—Particulars—Lack of 'such particulars as may be necessary for giving reasonable information of the nature of the charge'—Magistrates' Courts Rules 1952 (SI 1952 No 2190), r 77(1)(2)—Milk Distributive Wages Council (England and Wales) Wages Regulation Order 1952 (SI 1952 No 986), Sch, para 6(2)(b)(i). **Stephenson v Johnson** [1954] 1 369, QBD.

Statement of offence—Statement of offence not specifying correct enactment constituting offence—Particulars deficient—Road traffic offence—Objection taken at outset of hearing—No amendment—Whether conviction should be quashed—Magistrates' Courts Act 1952, s 100—Magistrates' Courts Rules 1952 (SI 1952 No 2190), r 77. **Hunter v Coombs** [1962] 1 904, QBD.

Two or more offences charged in one information—Whether 'defect in substance or form'—Whether justices entitled to hear information—Summary Jurisdiction Act 1848, ss 1, 10. **Edwards v Jones** [1947] 1 830, KBD.

Variance between information and evidence of prosecution—Risk of grave injustice to accused—Whether information should be amended—Magistrates' Courts Act 1952, s 100(1)(2). **Wright v Nicholson** [1970] 1 12, QBD.

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Separate charges of two offences—Charge of selling rationed food naming two different kinds of rationed food. **Kite v Brown** [1940] 4 293, KBD.

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Consent of defendant—Separate informations against two or more defendants—Whether court having power to hear informations together without consent of defendants. *Aldus v Watson* [1973] 2 1018, QBD.

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Right to reasonable particulars at any time after charge preferred—Charge of perjury—Evidence alleged to be perjured not identified in particulars of charge supplied to accused—Accused arrested on charge—Whether accused entitled to see sworn written information leading to his arrest before committal proceedings completed—Magistrates' Courts Rules 1952 (S 1 1952 No 2190), rr 13, 77. *R v Aylesbury Justices, ex parte Wisbey* [1965] 1 602, QBD.

Theft—

Information charging accused with stealing specified articles—Proof only that accused stole some of the articles specified—Whether necessary that prosecution should prove all articles specified in information to have been stolen—Theft Act 1968, s 9. *Machent v Quinn* [1970] 2 255, QBD.

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Two informations for one offence—

Pleas of guilty entered—Whether certiorari lies to quash conviction. *R v Cambell, ex parte Nomikos* [1956] 2 280, QBD.

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Accessory after the fact—

Summary trial—Whether jurisdiction to try summarily—Accessories and Abettors Act 1861, s 7. *R v West* [1962] 2 624, CCA.

Caravan sites—

Appeal against condition imposed by local authority in site licence—Condition same as that imposed by local planning authority—Whether magistrates had power to vary condition—Caravan Sites and Control of Development Act 1960, s 7(1). *R v Kent Justices, ex parte Crittenden* [1963] 2 245, QBD.

Control of unauthorised encampments—Gypsies—Power of justices to order removal of unlawful encampments on complaint of local authority—Local authority laying complaint—Justices fixing date for hearing without issuing summonses on caravan owners and occupiers—Jurisdiction of justices to entertain *ex parte* complaint—Caravan Sites Act 1968, ss 10, 11. *R v Havering Justices, ex parte Smith* [1974] 3 484, QBD.

Children and young persons—

Fine—Child in care of local authority—Power to order local authority to pay fine instead of child. *See* Children and young persons (Fine—Imposition—Court's power to order parent or guardian to pay fine instead of child or young person).

Claim of right—

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Common assault—

Ouster of jurisdiction—Execution under the process of any court of justice—Service of summonses by county court bailiff—Jurisdiction of justices—Procedure to be followed—Offences against the Person Act 1861, s 46—County Courts Act 1934, s 31. *R v Holsworthy Justices, ex parte Edwards* [1952] 1 411, KBD.

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Territorial waters—Wireless broadcast from disused fort more than three nautical miles from low-water mark off Kent coast—Wireless Telegraphy Act 1949, ss 1(1), 6(1)(a). *R v Kent Justices, ex parte Lye* [1967] 1 560, QBD.

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Carriage of goods—Breach of condition of A licence—Whether offence consisting of unlawful use of vehicle is 'in or on a vehicle'—Summary Jurisdiction Act 1879, s 46(3). **A F Wardhaugh Ltd v Mace** [1952] 2 28, QBD.

Probation—

Breach of probation order—Power to make fresh probation order for period of three years from date of fresh order—Effect of supervising court's decision on existing probation order—Criminal Justice Act 1948, ss 3(1), 6(3), Sch 1, para 3, proviso (a). **R v Havant Justices, ex parte Jacobs** [1957] 1 475, QBD.

Removal of child from jurisdiction—

Order forbidding removal—Whether magistrates' court having jurisdiction to make order. **T v T** [1968] 3 321, Div.

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Plea of guilty—Sentence passed—Invalid sentence—Whether magistrates had jurisdiction to substitute valid sentence—Sentence substituted by Divisional Court on application for certiorari—Administration of Justice Act 1960, s 16—Criminal Justice Act 1967, s 39. **R v Uxbridge Justices, ex parte Clark** [1968] 2 992, QBD.

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Trial of information—

Invalid summons—Trial following issue of invalid summons—Accused appearing before justices within six months of date of alleged offence—Copy of summons containing details of information before justices—Whether justices having jurisdiction to try accused despite invalidity of summons. **R v Brentford Justices, ex parte Catlin** [1975] 2 201, QBD.

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Adoption—Overlapping jurisdictions—Order conflicting with previous order of superior court—Divorce—Custody order—Parents of child divorced—County court consent order giving custody of child to mother and access to father—Remarriage of mother—Application by mother and stepfather for adoption order—Whether magistrates having power to make adoption order. **Re B (a minor) (adoption: jurisdiction)** [1975] 2 449, FamD.

Conviction—Maximum penalty fine of 40s—Remand in custody—Excess of jurisdiction—Children and Young Persons Act 1933, ss 47(3), 107(1)—Summary Jurisdiction (Children and Young Persons) Rules 1933 (S R & O 1933 No 819), r 11. **R v Toynbee Hall Juvenile Court Justices, ex parte Joseph** [1939] 3 16, KBD.

Summary trial of non-summary offence—Defendant remanded with a view to summary trial for wounding with intent—Defendant attained 17 while on remand—Subsequently charged with attempted murder based on same facts—Whether latter charge triable summarily—Magistrates' Courts Act 1952, s 20(1)—Children and Young Persons Act 1933, s 48(1). **R v Chelsea Justices, ex parte Director of Public Prosecutions** [1963] 3 657, QBD.

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Hearing—Persons who may be present—Persons directly concerned in the case—Exclusion from hearing—Effect—Child in care of local authority—Social worker having supervision of child—Social worker wishing to attend hearing of case against child—Social worker excluded from hearing—Whether social worker a person 'directly concerned in that case'—Whether exclusion of social worker depriving court of jurisdiction—Whether certiorari should be granted to quash proceedings—Children and Young Persons Act 1933, s 47(2). **R v Southwark Juvenile Court, ex parte NJ** [1973] 3 383, QBD.

Summons—Service—Child in care of local authority—Whether summons should be served on local authority. **R v Southwark Juvenile Court, ex parte NJ** [1973] 3 383, QBD.

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Mitigation of penalties—

Fine—

Power to sentence accused to fine of less than amount specified—Extent of power—National insurance contribution arrears recoverable as a penalty—Whether court can reduce amount of arrears adjudged recoverable—*Magistrates' Courts Act 1952*, ss 27(1), 126(1)(3) — *National Insurance Act 1946*, s 8—*National Insurance (Contributions) Regulations 1948* (S I 1948 No 1417), reg 19(5). **Leach v Litchfield [1960] 3 739, QBD.**

Fine in lieu of imprisonment—

Act under which offender prosecuted only providing penalty of imprisonment—Amount of fine—*Summary Jurisdiction Act 1879*, ss 4, 5—*Merchant Shipping Act 1894*, s 376(1)(d). **Lowther v Smith [1949] 1 943, KBD.**

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Appeal—Right of appeal by case stated. *See* **Case stated** (Right of appeal by—Party to proceedings—Informant—Obscene publications—Forfeiture order by justices in respect of certain obscene publications, no order in respect of others).

Articles seized under warrant of justices—Justices examining articles to decide whether summons should be issued—Hearing of summons by same justices—Whether same justices precluded from hearing summons—*Obscene Publications Act 1959*, s 3(3). **Morgan v Bowker [1963] 1 691, QBD.**

Defence of public good—Defence a separate issue from issue of obscenity—Magistrates determining issue of obscenity before hearing evidence on issue of public good—*Obscene Publications Act 1959*, s 4. **Olympia Press Ltd v Hollis [1974] 1 108, QBD.**

Reading of books by justices—Necessity for justices to be acquainted with books as a whole—Not necessary for justices to read every word of books—Collection of 34 different titles—Bench of six justices all reading some of books—Each book read by at least two justices—No book read by all the justices—Justices deliberating on books as a whole and forming collective opinion that books obscene—*Obscene Publications Act 1959*, s 3(3). **Olympia Press Ltd v Hollis [1974] 1 108, QBD.**

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What constitutes an order—Order is that which magistrates pronounce at the conclusion of the proceedings. **Jolliffe v Jolliffe [1963] 3 295, Div.**

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Jurisdiction of High Court to interfere—

Decision to which no reasonable bench could have come—Remittance by High Court of case stated with direction to convict. **Bracegirdle v Oxley [1947] 1 126, KBD.**

Plea of guilty—

Absence of accused—

Adjournment of proceedings before ordering disqualification—Disqualification—Road traffic offence—No adjournment to enable accused to be present and to be heard in mitigation—Circumstances of disqualification within s 5(3) of *Road Traffic Act 1962*—Whether order for disqualification should be quashed—*Magistrates' Courts Act 1957*, s 1(2), proviso (iii). **R v Llandrindod Wells Justices, ex parte Gibson [1968] 2 20, QBD.**

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Plea of guilty (cont)—

Absence of accused (cont)—

Notice sent to accused of procedure for pleading guilty without appearing—Adjournments—Notification in writing on behalf of accused of desire to plead guilty—Prosecution's witnesses present on date of adjourned trial—Police and other evidence heard in accused's absence—Whether court could proceed under Magistrates' Courts Act 1952, s 15, or was bound to proceed under Magistrates' Courts Act 1957, s 1. **R v Norham and Islandshire Justices, ex parte Sunter Bros Ltd** [1961] 1 455, QBD.

Plea of guilty notified in writing—Adjournment of case for purpose of enabling sentence of imprisonment, detention or disqualification to be imposed—Notice of adjournment must include reason therefor—Magistrates' Courts Act 1952, s 14(2)—Magistrates' Courts Act 1957, s 1(2), proviso (iii), (3). **R v Mason** [1965] 2 308, Liverpool Crown Court.

Written submission by accused with view to mitigation of sentence—Necessity for submission to be read out in court before accused convicted in his absence—Magistrates' Courts Act 1957, s 1(2), proviso (ii). **R v Oldham Justices, ex parte Morrissey** [1958] 3 559, QBD, **R v Davis, ex parte Brough** [1958] 3 559, QBD.

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Application to withdraw plea of guilty—Refusal by magistrate—Whether magistrates' court functus officio. **R v Guest, ex parte Anthony** [1964] 3 385, QBD.

Plea entered by accused's solicitor—Accused not asked how he pleaded—Whether certiorari lay to quash conviction—Magistrates' Courts Act 1952, s 13(1). **R v Wakefield Justices, ex parte Butterworth** [1970] 1 1181, QBD.

Subsequent application that plea be amended to not guilty—Whether plea of guilty can be withdrawn after judgment. **R v Campbell, ex parte Hoy** [1953] 1 684, QBD.

When plea finally accepted—Accused, youth subnormal mentally, not represented—Statement made by accused produced and accused and father given opportunity to explain position—Whether justices right in disallowing subsequent application to change plea. **R v Gore Justices, ex parte N (an infant)** [1966] 3 991, QBD.

When plea finally accepted—Summary Jurisdiction (Children and Young Persons) Rules 1933 (S R & O 1933 No 819), r 6. **R v Blandford Justices, ex parte G (an infant)** [1966] 1 1021, QBD.

Evidence—

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Content—Evidence—Which party's evidence accepted—Precise findings of fact—Signing of reasons by justices—Matrimonial Causes Rules 1957 (S I 1957 No 619), r 73(3). **Theobald v Theobald** [1962] 2 863, Div.

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Irish warrant. *See* **Indorsement of Irish warrant, ante.**

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Charge of statutory offence punishable by fine only—Insufficient damage entailed to support action unless charge injures fair fame of plaintiff—What amounts to injury to fair fame—Whether difference between solicitor and client costs and costs awarded to a successful appellant in criminal proceedings is sufficient damage to support an action for malicious prosecution—Prosecution for pulling communication cord contrary to the Regulation of Railways Act 1868, s 22. **Berry v British Transport Commission** [1961] 3 65, CA.

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MANDAMUS

Applicant—

Sufficiency of interest—

Bookmakers—Off-course betting premises licence—Collection of duty by Commissioners of Customs and Excise—Statutory provision for method of payment—Purported authority given by Ministry to commissioners to accept payment otherwise than as provided by statute—Application by bookmakers for mandamus requiring commissioners to comply with statute—Whether applicants had sufficient interest to support application for mandamus—Finance Act 1969, s 2, Sch 8. *R v Commissioners of Customs and Excise, ex parte Cooke and Stevenson [1970] 1 1068, QBD.*

Ratepayer—Failure of local authority to comply with own standing orders. *R v Hereford Corpn, ex parte Harrower [1970] 3 460, QBD.*

Application for—

Expedited hearing. *See Divisinal court (Practice—Expedited hearings—Cases stated—Prerogative orders).*

Attorney-General—

Certificate authorising appeal to House of Lords—

Attorney-General—Refusal of application for certificate—Whether duty to re-consider application—Whether mandamus would lie—Criminal Appeal Act 1907, s 1(6)—Criminal Justice Act 1925, s 16(1). *ex parte Blackburn [1956] 3 334, CA.*

Chairman of university convocation—

Performance of duty imposed by university statutes—

Alleged refusal to perform duty imposed by university statutes—Refusal to re-employ teacher in school—Whether mandamus would lie. *R v Dunsheath, ex parte Meredith [1950] 2 741, KBD.*

Chief officer of police—

Enforcement of law—

Gaming—Unlawful gaming in clubs—Policy decision reversed—Whether mandamus would lie to Commissioner of Police of the Metropolis—Whether applicant had sufficient interest to maintain proceedings for mandamus—Whether criminal cause or matter so as to exclude appeal to Court of Appeal—Supreme Court of Judicature (Consolidation) Act 1925, s 31(1) (a). *R v Metropolitan Police Comr, ex parte Blackburn [1968] 1 763, CA.*

MANDAMUS (cont)

Chief officer of police (cont)—

Enforcement of law (cont)—

Obscene publications—Sale in shops of pornographic material—Police procedure to enforce law against sale of pornography ineffective—Policy of referring all prima facie cases for prosecution to the Director of Public Prosecutions for advice—Procedure of police in cautioning and taking 'disclaimers' of material seized not conforming with the law—Cause of ineffectiveness of police efforts largely due to difficulty of enforcing Obscene Publications Act 1959—Whether mandamus would lie to Commissioner of Police of the Metropolis requiring him to enforce the law—Prosecution of Offences Regulations 1946 (S R & O 1946 No 1467), reg 6(2)(d). *R v Metropolitan Police Comr, ex parte Blackburn* (No 3) [1973] 1 324, CA.

Costs—

Payment by justices—

Motion for mandamus opposed by justices—Justices appearing by counsel—Motion granted—Justices liable for costs as parties to motion—Justices entitled to file affidavits in lieu of entering an appearance—No costs then payable—Review of Justices Decisions Act 1872, s 2. *R v Llanidloes Licensing Justices, ex parte Davies* [1957] 2 610, QBD.

Crown Court. *See* **Crown court** (Supervisory jurisdiction of High Court—Orders of mandamus, prohibition and certiorari).

Delay—

Discretion—

Exercise of discretion. *R v Senate of the University of Aston, ex parte Roffey* [1969] 2 964, QBD.

Discretion—

Local authority—

Statutory duty—Enforcement—Housing—Duty to rehouse persons displaced from residential accommodation by housing order—Circumstances in which order of mandamus inappropriate—Authority unable to comply with duty—Authority able to comply with duty only at expense of other housing applicants. *R v Bristol Corporation, ex parte Hendy* [1974] 1 1047, CA.

Immigration officer, to—

Refusal of admission to United Kingdom to Commonwealth citizen. *See* **Commonwealth Immigrant** (Admission—Refusal of admission—Discretion of immigration officer—Duty to act fairly).

Industrial court—

Failure to hear and determine reference by Minister. *See* **Industrial court** (Reference by Minister—Failure to hear and determine reference—Industrial Court acting as arbitral tribunal—Whether mandamus lay).

Licensing justices, to. *See* **Licensing** (Justices—Hearing of application for licence—Provisional licence).

Parliamentary Commissioner for Administration—

Whether mandamus lies. *See* **Parliamentary Commissioner for Administration** (Mandamus).

Quarter sessions—

Refusal of quarter sessions to state a case. *See* **Case stated** (Quarter Sessions—Refusal to state a case—Mandamus).

Refusal to state case—

Power of High Court to issue mandamus. *R v Somerset Justices, ex parte Ernest J Cole and Partners Ltd* [1950] 1 264, KBD.

Valuation officer—

Statutory duty—

Rating—Valuation list—Whether mandamus can lie to compel valuation officer to carry out his statutory duty, to prepare list in accordance with law—Whether certiorari to quash list was a necessary prerequisite of such an application for mandamus—Rating and Valuation (Miscellaneous Provisions) Act 1955, s 1(2). *R v Paddington Valuation Officer, ex parte Peachey Property Corp Ltd* [1965] 2 836, CA.

MANDATORY INJUNCTION

See **Injunction** (Mandatory injunction).

MANITOBA

Business tax. *See* **Canada** (Business tax—Manitoba).

MANOR

Privileges of tenants. *See* **Tolls** (Ancient demesne—Privileges of tenants in manor of ancient demesne).

MANSION HOUSE

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MANSLAUGHTER

Generally. *See* **Criminal law** (Manslaughter).

Will of victim—

Exclusion from benefit under will. *See* **Will** (Benefit—Exclusion from benefit—Public policy—Manslaughter).

MANUFACTURE

Dangerous weapons. *See* **Criminal law** (Dangerous weapons—Manufacture, sale or hire).

MANUFACTURER

Dangerous things—

Liability in negligence. *See* **Negligence** (Dangerous things—Manufacturer's liability).

Liability—

False trade description. *See* **Trade Description** (Offences due to fault of another person—Manufacturer and retailer).

MANUFACTURER (cont)

Negligence. *See* **Negligence** (Manufacturer's liability).

MARINE INSURANCE

Constructive loss. *See* **Loss—Constructive total loss, post.**

Deviation—

Trade custom—

Evidence—Ship proceeding from Poti to Istanbul—Voyage via Constantza—Deviation—Whether evidence of trade custom admissible—Absence of ambiguity in terms of charterparty. **Reardon Smith Lines Ltd v Black Sea & Baltic General Insurance Co Ltd, The Indian City** [1939] 3 444, HL.

Discovery. *See* **Discovery** (Marine insurance actions—Order for ship's papers).

Excepted perils—

Civil war—

Liability of underwriters. **Pesquerias Y Secaderos de Bacalao de Espana S A v Beer** [1949] 1 845, HL.

Infringement of customs regulations—

War risks policy—Institute war and strike clauses—Exclusion of liability for loss by reason of infringement of customs regulations—Confiscation of ship by order of foreign court on smuggling charge—Validity of order of foreign court—Burden of proof—Special court set up by decree of government of South Vietnam—Evidence that court acting under political direction and in excess of jurisdiction—Whether loss of ship attributable to political act of government of South Vietnam. **Panamanian Oriental Steamship Corp v Wright** [1971] 2 1028, CA.

Freight—

Exemption clause—

Claim consequent on loss of time—Time charter—Off-hire clause in charterparty—Machinery breakdown on chartered vessel and consequent stranding—Two months taken to effect repairs—Claim by shipowners under policy for loss of freight—Whether claim 'consequent on loss of time' or consequent on peril insured against—Whether exemption clause applicable—Institute Time Clauses, Freight, cl 8. **Naviera de Canarias SA v Nacional Hispanica Aseguradora SA** [1976] 3 167, CA.

Indemnity. *See* **Measure of indemnity, post.**

Loss—

Actual total loss—

Constructive total loss—Barratry—True facts at time of abandonment—Marine Insurance Act 1906, ss 57, 60(1), (2)(i). **Marstrand Fishing Co Ltd v Beer** [1937] 1 158, KBD.

Constructive total loss—

Freight—Agreement to pay if vessel a total loss—Cost of repairs greater than insured value of hull—Vessel worth more, when repaired, than insured value—No notice of abandonment—Whether constructive total loss—Marine Insurance Act 1906, s 60—Institute Time Clauses (Freight), cl 5. **Petros M Nomikos Ltd v Robertson** [1939] 2 723, HL.

Freight—Institute voyage clauses—Perils of the sea—Ship and cargo abandoned to salvors—Cost of repair for completion of contracted voyage. **Kulukundis v Norwich Union Fire Insurance Society** [1936] 2 242, 1488, CA.

Freight—Loss of freight not recoverable if arising from constructive total loss of vessel—Vessel abandoned either because loss appeared unavoidable or because cost of repairs would exceed value of vessel when repaired—Institute Time Clauses (Freight), cl 5, 6. **Vrondisis v Stevens** [1940] 3 74, KBD.

Insurance against total loss of estimated earnings due to constructive total loss of vessel—Constructive total loss of vessel—Losses after repair occasioned by fluctuation in charter market—No total loss of earnings—Losses not due to constructive total loss of vessel. **Continental Grain Co Inc v Twitchell** [1945] 1 575, CA.

Ship sheltering in Italian port—Perishable cargo not transhipped or released—Constructive total loss—Marine Insurance Act 1906, s 60(2)(i). **C Czarnikow Ltd v Java Sea and Fire Insurance Co Ltd Leslie & Anderson Ltd v Same** [1941] 3 256, KBD.

Statutory definition—Exclusion of common law—Partial loss—Termination of risk—Abandonment of voyage—Amount of indemnity—Marine Insurance Act 1906, ss 60(1)(2), 69(3), 78(4). **Irvin v Hine** [1949] 2 1089, KBD.

Indemnity—

Loss of goods attributable to unseaworthiness—Exclusion clause—Insurer's liability excluded where ship sent to sea in unseaworthy state with privity of the assured—Meaning of 'privity'—Degree of knowledge necessary—Knowledge of facts constituting unseaworthiness—Knowledge that ship rendered unseaworthy—Whether negligence or fault on part of assured sufficient to establish privity—Marine Insurance Act 1906, s 39(5). **Compania Maritima San Basilio SA v The Oceanus Mutual Underwriting Association (Bermuda) Ltd** [1976] 3 243, CA.

Measure of indemnity—

Suing and labouring clause—

Expenses due to condition of goods at time of shipment—Clause providing that insurance was not to cover loss, damage, or expense proximately caused by 'inherent vice' of goods insured—Whether expenses recoverable from insurers—Marine Insurance Act 1906, s 55 (2)(c)—Institute Cargo Clauses (Warlike Extension), cl 6. **F W Berk & Co Ltd v Style** [1955] 3 625, QBD.

Open policy—

Jurisdiction—

Certificate of insurance issued in respect of particular goods—Condition in policy that claim be referred to local tribunal of commerce—Jurisdiction of English court. **MacLeod Ross & Co Ltd v Compagnie d'Assurances Generales L'Helvetia of St Gall** [1952] 1 331, CA.

Order for ship's papers. *See* **Discovery** (Marine insurance actions—Order for ship's papers).

MARINE INSURANCE (cont)

Perils insured against—

All risks—

Inherent vice—Incorporation of cl 6 of Institute Cargo Clauses (War-time Extension)—Whether expenses due to inherent vice of subject-matter of insurance covered—*Marine Insurance Act 1906*, s 55(2)(c). **F W Berk & Co Ltd v Style** [1955] 3 625, QBD.

Collision clause—

Liability of insurer—Collision with Admiralty tug—Liability of insured under contract. **Furness, Withy & Co Ltd v Duder** [1936] 2 119, KBD.

Policy covering collision with other ship or vessel—Collision with flying boat—Whether flying boat a 'ship or vessel'. **Polpen Shipping Co Ltd v Commercial Union Assurance Co Ltd** [1943] 1 162, KBD.

Sum payable by way of damages—Indemnity to French pilot boat. **Hall Bros SS Co Ltd v Young, The Trident** [1939] 1 809, CA.

Fire—

Loss of vessel by fire—Burden of proof. **Slattery v Mance** [1962] 1 525, QBD.

General average—

Obedience to orders—Convoy instructed by Admiralty to return to port—Whether obedience to orders a general average act—*Marine Insurance Act 1906*, ss 66, 87—*York-Antwerp Rules 1924*, rr A, C, E. **Athel Line Ltd v Liverpool and London War Risks Insurance Assn Ltd** [1944] 1 46, KBD.

Latent defect—

Inchmaree clause—Damage to hull or machinery caused through breakage of shafts or through any latent defect—Latent defect in shaft—Breakage—Liability of insurer—*Marine Insurance Act 1906*, s 55(2)(c). **Scindia Steamships (London) Ltd v London Assurance** [1937] 3 895, KBD.

Perils of the sea—

Damage to cargo in rough weather usual at the time of year—Whether a fortuitous happening. **N E Neter & Co Ltd v Licenses and General Insurance Co Ltd** [1944] 1 341, KBD.

Rice damaged through lack of ventilation—Ventilators closed on account of rough weather—Damage caused by perils of the sea. **Canada Rice Mills Ltd v Union Marine and General Insurance Co Ltd** [1940] 4 169, PC.

Seizure—

Total loss—Seizure by peoples—Confiscation by workmen—Acts of workmen subsequently recognised by de facto government. **Société Belge des Betons Société Anonyme v London & Lancashire Insurance Co Ltd** [1938] 2 305, KBD.

Taking at sea—

Loss of goods—Recovery—Expenses properly incurred in recovery of goods—Cargo diverted by shipowners and mortgaged—Goods recovered by owners—Expenditure reasonably and properly incurred in recovery—Goods lost by reason of taking at sea—Indemnity for expenses and theft. **Nishina Trading Co Ltd v Chiyoda Fire & Marine Insurance Co Ltd** [1969] 2 776, CA.

War—

Collision with requisitioned ship—Requisitioned ship proceeding to be used as transport. **J Wharton (Shipping) Ltd v Mortleman** [1941] 2 261, CA.

Government decree controlling shipping—Ship attempting to return to enemy country in obedience to decree—Scuttling of ship—Frustration of voyage—Liability of insurers of cargo. **Forestal Land, Timber and Railways Co Ltd v Rickards, W W Howard Bros & Co Ltd v Kann, Middows Ltd v Robertson** [1941] 3 62, HL.

Insurable interest—Vessel sequestered by Spanish insurgents while on lawful contract voyage—Documentation of vessel—Loss of anticipated freight—*Marine Insurance Act 1906*, s 67—*Institute Time Clauses (Freight)*, cl 5. **Papadimitriou v Henderson** [1939] 3 908, KBD.

Loss caused through restraint, warlike operations, and civil war etc—Frustration clause if voyage or adventure lost through restraint of prices—Proximate cause of loss—Delay—*Institute Time Clauses (Freight)*, cl 8. **Atlantic Maritime Co Inc v Gibbon** [1953] 2 1086, CA.

Prolongation of voyage—Insurance against expenses incurred by 'prolongation' of voyage in compliance with orders or directions or with approval of a government department or insurers—Admiralty warning issued advising merchant shipping to avoid Suez Canal area as a result of hostilities—Vessels diverted round Cape because of warning—Diversions notified to insurers—Whether assured entitled to recover expenses incurred in diversions—Whether voyages prolonged. **Union Castle Mail Steamship Co Ltd v United Kingdom Mutual War Risks Assn Ltd** [1958] 1 431, QBD.

Warlike operation—

Consequences of warlike operations—Ship carrying war material including heavy deck cargo—Necessity to maintain speed and take zigzag course for fear of enemy submarines—Damage caused by effect of heavy seas on deck cargo and aggravated by reason of speed of ship. **Ocean Steamship Co Ltd v Liverpool and London War Risks Insurance Assn Ltd, The Priam** [1947] 2 586, HL.

Ship in convoy carrying petrol to war base for use of armed forces—Alteration of course to avoid enemy action—Unexpected and unexplained tidal set—Stranding. **Yorkshire Dale Steamship Co Ltd v Minister of War Transport, The Coxwold** [1942] 2 6, HL.

Ship returning home in ballast after discharging cargo at war base—Ship stranded. **Larrinaga Steamship Co Ltd v R** [1945] 1 329, HL.

Ship stranded while anchored according to instructions from naval authorities before discharging cargo—'Proceeding through the water'—Damage consequence of warlike operations. **Athel Line Ltd v Liverpool and London War Risks Insurance Assn Ltd** [1945] 2 694, CA.

Vessel carrying raw material for armaments—Carriage from England to France—Material not ready for use by army in the field. **Clan Line Steamers Ltd v Liverpool and London War**

MARINE INSURANCE (cont)

Pleading—

Particulars. *See* **Pleading** (Particulars—Marine insurance).

Practice—

Discovery—

Order for ship's papers on summons for directions. *See* **Discovery** (Marine insurance actions—Order for ship's papers).

Reinsurance—

Named ships—

Named ships 'and/or steamers held covered at premiums to be arranged'—Cargo in fact carried by another ship which was lost at date of reinsurance—Whether policy effective to cover loss. **Marine Insurance Co Ltd v Grimmer** [1944] 2 197, CA.

Right of action—

Assignment—

Chose in action. *See* **Chose in action** (Assignment—Right of action—Legal assignment—Marine insurance).

Risk—

Description of risk—

Dinghy insurance—Policy covering loss or damage 'whilst within the United Kingdom ashore or afloat'—Accident to craft in middle of English Channel. **Navigators and General Insurance Co Ltd v Ringrose** [1962] 1 97, CA.

Termination—

Custom of port—Cargo sorted by port authority after discharge from ship. **G H Renton & Co Ltd v Black Sea and Baltic General Insurance Co Ltd** [1941] 1 149, KBD.

Subrogation—

Interest—

Payment by own insurers—Loss due to defendants' breach of contract with insured paid to insured by own insurers—Whether insured can recover interest on damages awarded against defendant in respect of period after insurers' payment of loss—Marine Insurance Act 1906, s 79. **H Cousins & Co Ltd v D & C Carriers Ltd** [1971] 1 55, CA.

Payment as for total loss—

Salvage—Contribution to underwriters of increased value policies. **Boag v Standard Marine Insurance Co Ltd** (Bodey, Jerrim & Denning Ltd v Pentiron Steamship Co Ltd) [1937] 1 714, CA.

Total loss—

Assured recovering damages from third party at fault of amount exceeding sum paid by insurer—Insurer not entitled to recover excess amount from assured—Valued policy—Policy value of vessel less than actual value—Marine Insurance Act 1906, s 79(1). **Yorkshire Insurance Co Ltd v Nisbet Shipping Co Ltd** [1961] 2 487, QBD.

Time policy—

Contract for a definite period of time—

Contract determinable on notice by either side and, if not determined, continued automatically from year to year—Whether contract for 'a definite period of time'—Whether a time policy—Marine Insurance Act 1906, s 25(1). **Compania Maritima San Basilio SA v The Oceanus Mutual Underwriting Association (Bermuda) Ltd** [1976] 3 243, CA.Trade custom. *See* **Deviation**—Trade custom, *ante*.War. *See* **Perils insured against**—War, *ante*.

Warranty—

Breach—

Inception of this insurance—Warranty that all arrangements for conversion of ship made at 'inception of this insurance'. **Simons (Trading as Acme Credit Services) v Gale** [1958] 2 504, PC.**MARINER**Will. *See* **Will** (Soldier's and sailor's privileged will).**MARITAL COMMUNICATIONS**Breach of confidence. *See* **Equity** (Breach of confidence—Marital communications).**MARITAL STATUS**

Declaration as to—

Jurisdiction. *See* **Declaration** (Jurisdiction—Declaration as to marital status).**MARITIME LAW**Prize law. *See* **Prize law**.**MARITIME LIEN**Admiralty proceedings. *See* **Admiralty** (Jurisdiction—Action in rem—Maritime lien or other charge on ship).Generally. *See* **Shipping** (Maritime lien).**MARK**

Origin of—

Imported food. *See* **Food and drugs** (Marks of origin—Imported food).Trade. *See* **Trade mark**.**MARKET**Extinction of use. *See* **Town and country planning** (Development—Extinction of use—Open site used for market trading).

Sunday trading—

Market stall—

Place where any retail trade or business carried on. *See* **Shop** (Sunday closing—Retail trading elsewhere than in shop—Place where any retail trade or business carried on).

MARKETING SCHEME

Apple and Pear Publicity Scheme. *See* **Agriculture** (Marketing scheme—Validity—Apple and Pear Publicity Scheme).

MARKETS AND FAIRS

Disturbance—

Annual fair or wake—

Right of inhabitants of parish by ancient usage to hold annual fair or wake—Enclosure award made pursuant to private Act of Parliament appointing certain parcels of land in parish on which inhabitants might hold fair—Declaration in award of future right of inhabitants to hold fair annually and bar against disturbing surface—Annual fair or wake had not then been held within living memory—Planning permission obtained by defendant and building begun—Inhabitants of parish claimed to be entitled to preserve right to hold fair—Whether right established—Whether action maintainable by plaintiffs as representatives of inhabitants of parish—Whether Attorney-General a necessary party—Whether right vested in parish council—Local Government Act 1894, s 6(1)(a). **Wyld v Silver** [1962] 3 309, CA.

Levying of rival market—

Market rights extending to live pigs for slaughter of bacon weight and pig carcasses—Establishment of abattoir and live pig collecting centre outside market—Withdrawal of bacon pig market from market. **Scottish Co-operative Wholesale Society Ltd v Ulster Farmers' Mart Co Ltd** [1959] 2 486, HL.

Highway, on—

Obstruction. *See* **Highway** (Obstruction—Market).

Market authority—

Certiorari. *See* **Certiorari** (Jurisdiction—Bodies amenable to jurisdiction—Market authority).

Market owner—

Duty—

Liability of market owner for injuries by animals brought to market—Injury to member of public on highway—Whether market owner liable. **Brackenborough v Spalding Urban District Council** [1942] 1 34, HL.

Rates—

Valuation. *See* **Rates** (Valuation—Market).

Right of public to attend market—

Stallholder—

Grant of licence by owner of market to erect stall in specified place—Nature of stallholder's right—Whether a common law right—Whether decision to determine licence affecting stallholder's common law rights. **R v Barnsley Metropolitan Borough Council, ex parte Hook** [1976] 3 452, CA.

Stallage—

Amount properly chargeable—

No amount fixed by charter or custom—No compulsion to take stalls—Whether amount charged excessive and unreasonable. **Attorney-General v Colchester Corp'n** [1952] 2 297, ChD.

Stall—

Whether a shop. *See* **Medicine** (Sale by retail—Shop).

Street trading. *See* **Street trading**.

MARRIAGE

Banns—

Due publication—

Delivery of particulars of true Christian name and surname—Married woman giving her maiden name—Publication in maiden name—Knowledge of both parties—Whether 'due publication'—Marriage Act 1823, s 22. **Chipchase v Chipchase** (otherwise **Leetch, otherwise Matthews**) [1941] 2 560, Div.

Delivery of particulars of true Christian name and surname—Surname acquired by repute—Banns published in name acquired by repute—Whether 'due publication'—Absence of fraud—Marriage Act 1823, ss 7, 22. **Dancer v Dancer** [1948] 2 731, Div.

Bigamy. *See* **Criminal law** (Bigamy).

Breach of promise—

Fraudulent concealment of previous marriage—

Action long after pretended marriage. **Beysers v Green** [1936] 1 613, KBD.

Promise by married man after decree nisi of divorce but before decree absolute—

Public policy. **Fender v Mildmay** [1937] 3 402, HL.

Breach of promise of marriage—

Action for damages

Ceylon—No right of action unless promise made in writing—'Writing'—Ceylon Marriage Registration Ordinance (Vol III, Legislative Enactments of Ceylon), s 19, proviso. **Udalagama v Boange** [1959] 3 403, PC.

Action for damages—

Prerequisite for action—Statutory requirement that promise made in writing—Evidence necessary to satisfy statutory requirements—Ceylon. **Udalagama v Boange** [1959] 3 403, PC.

Promise made by person already married—Enforceability—Public policy—Whether promise unenforceable as performance would involve bigamy—Promisee unaware of illegality—Promisor deceased—Special damages—Law Reform (Miscellaneous Provisions) Act 1934, s 1(1). **Shaw v Shaw** [1954] 2 638, CA.

Costs—

Security for costs—Plaintiff ordinarily resident out of jurisdiction. *See* **Costs** (Security for costs—Plaintiff ordinarily resident out of the jurisdiction—Action for breach of promise of marriage).

MARRIAGE (cont)

Ceremony—

Failure to comply with form—

Validity—Failure to comply literally with form of marriage service—Effect—*Marriage Act 1904*, (Laws of Barbados, No 9 of 1904), s 2. *Hill v Hill* [1959] 1 281, PC.

Certificate—

Affidavit supporting. *See Practice* (Chancery Division—Affidavit—Affidavit supporting—Certificate of birth, marriage or death).

Certificate and licence for solemnisation of marriage—

Impediment—

Foreign domicile—Foreign domicile of both parties and legal incapacity of intending husband to remarry validly by foreign law—Husband an Italian national divorced in Switzerland and by Italian law, recognised in Switzerland, not free to remarry—Legal incapacity for remarriage inapplicable by foreign law to husband's ex-wife—Whether such discriminatory incapacity recognised by English court—Whether lawful impediment to the granting of a certificate and licence to marry in England—*Marriage Act 1949*, s 32(2)(a). *R v Brentwood Superintendent Registrar of Marriages, ex parte Arias* [1968] 3 279, QBD.Consanguinity. *See Prohibited degrees of consanguinity, post.*

Consent—

Degree of soundness of mind required—

Test to be applied—Capacity to understand nature of contract. *In the Estate of Park* [1953] 2 1411, CA.

Contract—

Proper law. *See Conflict of laws* (Contract—Proper law of contract—Contract of marriage).

Death—

Presumption of death before re-marriage. *See Husband and wife* (Presumption of death).Declaration as to marital status. *See Declaration* (Jurisdiction—Declaration as to marital status).

Declaration of subsistence of marriage—

Jurisdiction—

Foreign divorce—Husband domiciled abroad—Wife resident in England—At time of marriage husband and wife domiciled in England—Wife's petition for declaration that marriage still subsisting—Whether court had jurisdiction to entertain petition—Supreme Court of Judicature (Consolidation) Act 1925, s 225—RSC, Ord 15, r 17. *Garthwaite v Garthwaite* [1964] 2 233, CA.Dissolution. *See Divorce*

Evidence—

Marriage certificate—

Certificate of marriage according to law of Southern Rhodesia—Whether displaced by husband's evidence of mistaken belief that marriage was polygamous. *Kassim (otherwise Widmann) v Kassim (otherwise Hassim)* (Carl and Dickson cited) [1962] 3 426, Div.Conclusiveness—Wife described as widow—No proof of death of first husband. *Re Peete (decd)* [1952] 2 599, ChD.

Foreign domicile—

Certificate and licence for solemnisation of marriage—

Impediment. *See Certificate and licence for solemnisation of marriage—Impediment—Foreign domicile, ante.*

Foreign marriage—

Evidence—

Divorce. *See Divorce* (Evidence—Foreign marriage).

Recognition—

Marriage by proxy—Validity. *Apt (otherwise Magnus) v Apt* [1947] 2 677, CA, *Ponticelli v Ponticelli (otherwise Giguo)* (by her guardian) [1958] 1 357, Div.

Validity—

Common law—Marriage in Italy—Husband domiciled in Poland and serving with Polish forces in Italy—Wife domiciled in Italy—Ceremony performed by Roman Catholic priest—Civil ceremony—Not valid by Italian or Polish law—Whether valid at common law. *Lazarewicz (otherwise Fadanelli) v Lazarewicz* [1962] 2 5, Div.Essential requirements of valid marriage distinguished from procedural requirements—*Foreign Marriage Act 1892*, s 8. *Collet (otherwise Sakazova) v Collett* [1967] 2 426, Div.Essential validity. *See Conflict of laws* (Marriage—Validity—Essential validity).Forms and ceremonies—Burden of proof. *Preston (otherwise Putynski) v Preston (otherwise Putynska)* (otherwise Basinska) [1963] 2 405, CA.Lex loci celebrationis—Invalid marriage—Retrospective validation—Requirement of registration not complied with. *Pilinski v Pilinska* [1955] 1 631, Div.Marriage in Germany of domiciled Poles—Husband a member of Polish forces in Polish camp in Germany—Camp under control of allies—Allies in belligerent occupation of Germany—Ceremony of marriage performed by chaplain in accordance with Roman Catholic rites—Whether marriage valid as English common law marriage abroad. *Preston (otherwise Putynski) v Preston (otherwise Putynska)* (otherwise Basinska) [1962] 3 1057, Div.Marriage in Germany of Polish nationals domiciled in Poland—Husband and wife members of Allied Army of Occupation in Germany—Ceremony performed by Polish army chaplain according to rites of Roman Catholic church—Not valid by lex loci celebrationis—Valid by English law. *Merker v Merker* [1962] 3 928, Div.Marriage in Germany of Polish nationals domiciled in Poland—Not valid by German law—No subjection to German law—Separate community—Displaced persons—Common law marriage. *Kochanski v Kochanska* [1957] 3 142, Div.

MARRIAGE (cont)

Foreign marriage (cont)—

Validity (cont)—

Marriage in Italy of Polish nationals domiciled in Poland—Husband a member of the Allied forces in belligerent occupation of Italy—Ceremony performed by Polish army chaplain according to rites of Roman Catholic church—Not valid by *lex loci celebrationis* or under Polish law then in force, although valid under earlier Polish law—Whether valid at common law—Whether validated as an act of 'internal administration' of Polish forces—Whether ceremony performed by chaplain 'officiating under the orders of the commanding officer of a British army serving abroad'—Foreign Marriage Act 1892, s 22—Allied Forces Act 1940, s 1(1)—Polish Resettlement Act 1947, s 9. *Taczanowska (otherwise Roth) v Taczanowski (Krystek cited)* [1957] 2 563, CA.

Marriage in Russia—Parties domiciled in England—Requirements of Soviet law not observed—'Mistake'—Wife forbidden to leave Russia—Avoidance for failure of condition. *Kenward v Kenward* [1950] 2 297, CA.

Petitioner Canadian by birth but domiciled in England—Petitioner in China on consular service—Marriage of petitioner to Canadian lady in China—Ceremony not performed by an episcopally ordained priest—Extent of English law applicable to British subjects abroad—Marriage valid—Foreign Marriages Act 1892, s 23—China Order in Council 1925 (S R & O 1925 No 602), art 104. *Wolfenden v Wolfenden* [1945] 2 539, Div.

Invalid—

Concealment of right of action by fraud—

Limitation of action. *See Limitation of action* (Concealment of right of action by fraud—Marriage contract—Invalid marriage).

Invalidity—

Declaration—

Marriage terminated by foreign decree of divorce—Divorce obtained under duress. *See Divorce* (Foreign decree—Invalidity—Basis of invalidity—Lack of consent to divorce proceedings—Duress).

Irretrievable breakdown of—

Divorce. *See Divorce* (Irretrievable breakdown of marriage).

Licence—

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Chinese customary marriage—Regarded as monogamous by Hong Kong law—Question whether monogamous marriage to be determined according to English law. *Lee v Lau* [1964] 2 248, Div.

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Monogamous at date of proceedings—Civil monogamous marriage—Mistaken belief of husband that marriage into which he was entering was a polygamous marriage—Consent to marriage not vitiated—Subsequent re-marriage of husband bigamous. *Kassim (otherwise Widmann) v Kassim (otherwise Hassim)(Carl and Dickson cited)* [1962] 3 426, Div.

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Knowingly and wilfully solemnising a 'marriage' in place other than church or registered building—Indictment—Form of indictment—Islamic ceremony—Ceremony in private house—Marriage Act 1836, s 39. **R v Rahman** [1949] 2 165, Assizes.

Knowingly and wilfully solemnising a 'marriage' in place other than church or registered building—Potentially polygamous Mohammedan marriage solemnised in private house—Whether ceremony a marriage—Marriage Act 1949, s 75(2)(a). **R v Bham** [1965] 3 124, CCA.

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British subject domiciled in England—Procedure to obtain declaration—Matrimonial Causes Act 1965, s 39—Matrimonial Causes Rules 1957 (S I 1957 No 619), r 74. **Collett (otherwise Sakazova) v Collett** [1967] 2 426, Div.

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Parties to proceedings—Validity of marriage dependent on recognition of foreign decree of divorce—Whether first wife should be served—Natural justice—RSC, Ord 15, rr 6, 16. **Kunstler v Kunstler** [1969] 3 673, Div.

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Marriage celebrated abroad—Wife domiciled abroad—Husband domiciled in England—Marriage legal under lex celebrationis and law of wife's domicile—Marriage illegal under Age of Marriage Act 1929, s 1(1). **Pugh v Pugh** [1951] 2 680, Div.

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Omnia praesumuntur rite esse acta—Omnia praesumuntur pro matrimonio—Ceremony followed by cohabitation—Conclusiveness of marriage certificate—Standard of proof to rebut presumption. **Mahadervan v Mahadervan** [1962] 3 1108, Div.

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Benefit of infant—

Arbitration clause—Action by infant—Stay of proceedings—Arbitration Act 1950, s 4. **Slade v Metrodent Ltd** [1953] 2 336, QBD.Imperfect system of teaching—Delegation of instruction—Contract not for benefit of infant—Doctrine of common employment inapplicable. **Olsen v Corry and Gravesend Aviation Ltd** [1936] 3 241, KBD.

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Breach of contract by employers—Damages—Apprentice entitled to damages for diminution of future prospects as well as for loss of earnings and training during remainder of term of apprenticeship—Assessment of damages. **Dunk v George Waller & Son Ltd** [1970] 2 630, CA.Conduct likely to lead to loss of time on part of other employees—Breach of covenant in apprenticeship deed—Apprentice a minor. **Newell v Gillingham Corpn.** [1941] 1 552, KBD.

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Dissolution of partnership by retirement of one partner—Notice by retiring partner disclaiming any future liability—Apprentice continuing to work for remaining partner and receiving payment—Breach of contract of apprenticeship. **Titmus and Titmus v Rose and Watts** [1940] 1 599, KBD.

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Rules of society incorporated in contract of employment—Amendment of rules—Whether binding on agent appointed before amendment—Validity of amendment. **Yeo v Stewart** [1947] 2 28, KBD.

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Contract of service (cont)—

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Damages—Pension fund contributions—Employer's contributions—Contract providing for payment of contributions by employer to pension fund for employee—Failure of employer to pay contributions—Employee's loss of entitlement to pension rights—Amount of damages—Amount necessary to restore employee to position in which he would have been if contributions had been paid—Whether employee entitled to claim damages equal to sum of unpaid contributions. **The Halcyon Skies** [1976] 1 856, QBD.

Destruction of servant's post on sale—Breach not waived by subsequent acceptance of amounts equal to salary—Engagement as chief sub-editor of newspaper—Sale of newspaper during contract period—Servant's services not retained by purchasers. **Collier v Sunday Referee Publishing Co Ltd** [1940] 4 234, KBD.

Injunction—Notice by master to terminate contract—Circumstances in which injunction may be granted—Equitable principles—Threat of industrial action—Employees members of trade union—Union threatening to take industrial action in pursuance of trade dispute—Employers giving notice that unless union called off action members would be treated as having terminated their contracts of employment—Action by employees to restrain employers from terminating employment—Motion for interlocutory injunction—Employees not having engaged in industrial action at date of hearing—Employees refusing to give undertaking not to do so—Whether interlocutory injunction should be granted. **Chappell v Times Newspapers Ltd** [1975] 2 233, CA.

Injunction—Notice by master to terminate contract—Notice in breach of contract as being too short—Interim injunction to restrain master from treating notice as having determined contract—Special circumstances justifying grant of injunction—Plaintiff employed by defendants for 35 years—Plaintiff within two years of retirement—Defendants altering conditions of employment by requiring him to join trade union—Plaintiff given one month's notice to terminate contract on refusing to join union—Damages an inadequate remedy—Personal confidence between parties subsisting—Prospect of plaintiff's rights being safeguarded on implementation of new legislation on industrial relations if proper period of notice given. **Hill v C A Parsons & Co Ltd** [1971] 3 1345, CA.

Withdrawal of recognition from employees' trade union—Post Office—Whether implied term of contract that Post Office would continue to recognise trade union—Whether new contract of service, resulting from reorganisation of Post Office under the Post Office Act 1969, bound Post Office to indefinite recognition of union. **Gallagher v Post Office** [1970] 3 712, ChD.

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Coal mining service agreement—

Certainty of term—Agreement by deputy to work such days or part days in each week as may reasonably be required by the management—Measure of damages for refusal to work shift by deputy—Relevance of concerted refusal by other deputies to work same shift. **National Coal Board v Galley** [1958] 1 91, CA.

Employment terminable on 14 days' notice—Scheme of working reorganised—Alteration in scheme of working not part of original contract—Employees terminating altered scheme by less than 14 days' notice—Notice reasonable—No breach of contract by employees—Employers and Workmen Act 1875, s 9. **Dorman Long & Co Ltd v Carroll** [1945] 2 567, KBD.

Collective agreement—

Imported into individual contracts of service—Contracts of Employment Act 1963, s 4(5). **Camden Exhibition and Display Ltd v Lynott** [1965] 3 28, CA.

Construction—

Engineer employed by local authority to work under consultant engineers—Whether contract of service or contract for services—Local Government Superannuation Act 1937, ss 3(2)(a), 40(1). **Morreen v Swinton and Pendlebury Borough Council** [1965] 2 349, QBD.

Continuous employment. *See* **Employment** (Continuity).

Contract in writing—

Dissolution of employer company and transfer of property, rights and liabilities to another company—Whether contract of service between employee and transferee company—Companies Act 1929, s 154. **Nokes v Doncaster Amalgamated Collieries Ltd** [1940] 3 549, HL.

Crown servant—

Rescission of appointment and re-employment at reduced salary—Whether termination or variation of contract—Guyana. *See* **Guyana** (Crown servant—Contract of service—Termination or variation of contract).

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Notice—Reasonable notice—Controller of cinemas. **Adams v Union Cinemas Ltd** [1939] 3 136, CA.

Notice—Reasonable notice—Manager of credit betting business. **S W Strange Ltd v Mann** [1965] 1 1069, ChD.

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Yearly hiring—Presumption. *See* **Contract of service**—Presumption of yearly hiring, *post*.

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Contract of service (cont)—

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Sickness of employee—Absence from work—Absence for period of 18 months—Employee not entitled to sick pay under contract of employment—Employers taking no steps to terminate employee's contract—Normal practice of employers to take sick employees back when fit to resume work—Employers closing down works—Employers giving employee notice to terminate contract—Entitlement to redundancy payment—Whether contract previously terminated by frustration. *Marshall v Harland & Wolff Ltd* [1972] 2 715, NIRC.

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Disruption of employer's business—Duty of servant not to interpret instructions of master in such a way as to disrupt operation of business—Railway workers—Rule book—'Work to rule'—Object of work to rule to place unreasonable interpretation on rules in rule book and so apply them as to disrupt operation of railways—Concerted course of action by all railway workers—Action in breach of implied condition of workers' contracts of service. *Secretary of State for Employment v Associated Society of Locomotive Engineers and Firemen* (No 2) [1972] 2 949, NIRC & CA.

Duty of care. *See Contract* (Implied term—Contract of service—Contract embodying whole arrangements between the parties—Employer resident abroad—Services to be rendered abroad—Personal injuries sustained by employee).

Indemnity against liability—Accident caused by servant's negligence—Damages paid by employer to third parties—Right of employer to recover amount from servant. *Semtex Ltd v Gladstone* [1954] 2 206, Assizes.

Performance of statutory duty—Servant not required to perform illegal act—Permitting vehicle to be used on road without policy of insurance in force—Accident caused by servant's negligence—Liability of employer for damages—Road Traffic Act 1930, s 35(1). *Gregory v Ford* [1951] 1 121, Assizes.

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Incidents of contract—

Agreement by one with another to provide services to a third—Whether contract of service or contract sui generis. *Construction Industry Training Board v Labour Force Ltd* [1970] 3 220, QBD.

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Film actress—Negative stipulations—Enforcement by injunction. *Warner Bros Pictures Inc v Nelson* [1936] 3 160, KBD.

Legality—

Provision calculated to deceive revenue authorities—Payment for expenses at excessive figure. *Napier v National Business Agency Ltd* [1951] 2 264, CA.

Meaning—

Copyright—Work made in course of author's employment under a contract of service. *See Copyright* (Ownership—Work made in course of author's employment under a contract of service).

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No mention of nature of duties—Implication of term as to reasonable notice of termination of contract where memorandum insufficient. *James v Thomas H Kent & Co Ltd* [1950] 2 1099, CA.

Necessity for writing—

Modification of previous employment—Request and promise to reduce contract into writing—Statute of Frauds 1677, s 4. *Adams v Union Cinemas Ltd* [1939] 3 136, CA.

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May be determined by notice under Contracts of Employment Act—Period of employment of six weeks only—One month's wages in lieu of notice—Whether Act applied—Whether reasonable notice—Contracts of Employment Act 1963, s 1(1). *Richardson v Konford* [1969] 3 1264, CA.

Reasonable notice—Commercial contract for an indefinite term. *de Stempel v Dunkels* [1938] 1 238, CA.

Receiver and manager appointed by debenture holder—Contracts of employees of company forthwith terminated by receiver and employees re-employed—Company subsequently ceasing business and employee given nine days notice—Whether continuity of employment with company notwithstanding the appointment of the receiver, the termination of service and the re-employment—Length of notice required—Whether receiver liable personally for wrongful dismissal—Companies Act 1948, s 369(2)—Contracts of Employment Act 1963, s 1(2). *Re Mack Trucks (Britain) Ltd* [1967] 1 977, ChD.

Withdrawal of notice—Unilateral withdrawal—Notice by employee terminating contract—Notice accepted by employers—Whether employee thereafter able to withdraw notice unilaterally before expiry date. *Harris & Russell Ltd v Slingsby* [1973] 3 31, NIRC.

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Contract of service (cont)—

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Commission only payable for complete year. **Jackson v Hayes Candy & Co Ltd** [1938] 4 587, KBD.

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Dismissal after three months—Contract not to be performed within a year—General hiring for a year—Custom as to notice in case of sales manager—Statute of Frauds 1677, s 4.

Vernon v Findlay [1939] 2 716, CA.

Indefinite hiring subject to reasonable notice—Reasonable notice—Salesman—Grade of salesman. **Fisher v W B Dick & Co Ltd** [1938] 4 467, KBD.

Presumption no longer valid. **Richardson v Koefod** [1969] 3 1264, CA.

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Terms of former service agreement—Application to new contract—Whether restrictive covenant in former contract incorporated. **S W Strange Ltd v Mann** [1965] 1 1069, ChD.

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Impossibility of performance—Automatic termination—Sentence of imprisonment passed on employee—Circumstances in which sentence rendering contract impossible to perform—

Foreman of previous good character in same employment for 25 years—Foreman sentenced to 12 months' imprisonment for assault in brawl unconnected with employment—Whether sentence terminating contract of employment. **Hare v Murphy Brothers Ltd** [1974] 3 940, CA.

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Termination on appointment of receiver—Circumstances in which appointment operating to terminate contract. *See* **Company** (Receiver—Appointment by debenture holder—Appointment as agent of company—Effect—Termination of employee's contract of service).

Termination on sale of business by receiver—Employers taken on by purchaser company—Entitlement to pension as on termination. *See* **Company** (Receiver—Sale of business—Effect on employees of company—Sale by receiver to wholly-owned subsidiary—Employees' contracts of service thereby terminated—Contributory pension fund for benefit of employees).

Time when bound by terms of employment—

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Want of mutuality—

Stipulations in favour of one party—Restrictions during service—Public policy—Film actress—Suspension of salary—Penalty. **Gaumont Picture Corpn Ltd v Alexander** [1936] 2 1686, KBD.

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Delivery to employee—Failure to deliver—Reference to tribunal—Limitation period—Employment having ceased—Reference to be made within three months of employment ceasing—Written particulars of change in terms of employment—Employee ignorant of change until more than three months after termination of employment—Whether tribunal having jurisdiction to entertain reference—Whether power to extend limitation period in cases of equitable fraud or mistake—Contracts of Employment Act 1972, s 8(8). **Grimes v London Borough of Sutton** [1973] 2 448, NIRC.

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Dismissal (cont)—

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Certiorari—University—Professor—University regulated by statute and contracts of appointment of teachers (including professors) subject to statutory power of dismissal—Relationship between university and teachers that of master and servant—Professor summarily dismissed under statutory power—**Certiorari** not available to quash order of dismissal—**Vidyodaya University and Vidyalandara University Act 1958** (No 45 of 1958), s 18(e). **Vidyodaya University of Ceylon v Silva** [1964] 3 865, PC.

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Duty of master—

Employment of servant—

Experienced workman—Task not shown to be within his competence—Duty not sufficiently discharged by relying solely on workman. **Jenner v Allen West & Co Ltd** [1959] 2 115, CA.

Provision of competent fellow servants—Workman continually indulging in horseplay—Injury to fellow servant. **Hudson v Ridge Manufacturing Co Ltd** [1957] 2 229, Assizes.

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Property of servant—

House physician's clothing stolen from hostel—Whether master owed duty to take reasonable care of property. **Edwards v West Herts Group Hospital Management Committee** [1957] 1 541, CA.

Safe means of access to place of work—

Access to place of work over private land of another person—Whether master under duty to provide reasonably safe route of access or to warn servant of known dangers existing on authorised route. **Ashdown v Samuel Williams & Sons Ltd** [1957] 1 35, CA.

Third parties occupiers of premises—Whether master ought to have made complaints to third parties about condition of premises. **Smith v Vange Scaffolding and Engineering Co Ltd** [1970] 1 249, QBD.

Third party's premises—Accident to employee in obtaining access to place of work—Whether employee had full appreciation of risk. **Smith v Austin Lifts Ltd** [1959] 1 81, HL.

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Safety of employees—

Breach of statutory duty—Scope of statutory protection—Premises on which employee employed to work—Employee forbidden to enter room in building in which employed to work—Lift motor room—Room containing insecure trapdoor—Employer in breach of statutory duty in respect of trapdoor—Employee entering room—Employee fatally injured by falling through trapdoor—Whether employer liable for breach of statutory duty—Offices, Shops and Railway Premises Act 1963, ss 1(2)(a), 16. **Westwood v The Post Office** [1973] 3 184, HL.

Safety of workmen—

Statutory duty—Building operations. *See* **Building** (Building regulations).

Statutory duty—

Building regulations. *See* **Building** (Building regulations).

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After termination of service—

Disclosure of secret process to patent agent—Patentability—Inducement of breach of agreement—Justification—Conspiracy. **British Industrial Plastics Ltd v Ferguson** [1940] 1 479, HL.

Setting up competing business—Use of knowledge honestly and properly acquired. **E Worsley & Co Ltd v Cooper** [1939] 1 290, ChD.

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Exceptions from obligation of non-disclosure—Disclosure justifiable in the public interest—Alleged arrangement within Restrictive Trade Practices Act 1956, s 6, but not registered under s 9. **Initial Services Ltd v Putterill** [1967] 3 145, CA.

Fidelity—

Skilled manual worker assisting trade competitor during spare time—Whether breach of duty. **Hivac Ltd v Park Royal Scientific Instruments Ltd** [1946] 1 350, CA.

Solicitor employing assistant solicitor—Implied term that assistant solicitor would serve solicitor with good faith and fidelity—Assistant solicitor accepting offer from important client of solicitor to take lease of premises owned by client and to do client's legal work—Assistant solicitor leaving solicitor's employment and entering into agreement with client to undertake all legal work for client for seven years—Whether breach of agreement with solicitor. **Sanders v Parry** [1967] 2 803, Assizes.

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Period of continuous employment. *See* **Employment** (Continuity).

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Estoppel—

Written particulars of terms of employment given to employee—

Representation to servant. *See* **Estoppel** (Conduct—Employment—Written particulars of terms of employment given to claimant in accordance with statute—Representation to claimant that he was employee).Expenses. *See* Remuneration—Salary plus expenses, *post*.Experienced workman. *See* Duty of master—Employment of servant—Experienced workman, *ante*.Fidelity. *See* Duty of servant—Fidelity, *ante*.Foreseeability of injury. *See* Liability of master—Negligence—Foreseeability of injury, *post*.

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Claim by employees for increase in wages following an agreement between an employers' confederation and trade unions—Employers in question not parties to agreement—Employers already paying higher rate of wages than that mentioned in agreement—Conditions of Employment and National Arbitration Order 1940 (S R & O 1940 No 1305), arts 5, 7. *R v National Arbitration Tribunal, ex parte Midgley Harmer Ltd* [1947] 1 196, CA.

Claim for minimum rates—Jurisdiction of tribunal—Whether limited to 'trade disputes which cannot otherwise be determined'—Whether claims for rise in wages amounted to claims for minimum rates—Conditions of Employment and National Arbitration Order 1940 (S R & O 1940 No 1305). *R v National Arbitration Tribunal ex parte Imperial Tobacco Co Ltd* [1943] 2 162, KBD.

Dispute between workman and employers arising out of interpretation of workman's contract of service—Conditions of Employment and National Arbitration Order 1940 (S R & O 1940 No 1305), art 7. *Re Birkenhead Corp's Resolutions* [1952] 1 262, ChD.

Local Government staff—Claim by union for pay of staff called up for service to be made up to level they would have received if not called up—Whether a 'trade dispute'—Industrial Courts Acts 1919, s 8—Local Government Staffs (War Service) Act 1939, s 1—Defence (General) Regulations 1939, reg 58AA—Conditions of Employment and National Arbitration Order 1940. (S R & O 1940 No 1305) art 2. *National Assn of Local Government Officers v Bolton Corp* [1942] 2 425, HL.

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Provision in contract as to place or manner in which wages to be laid out or expended—Contract void—Wages due or to become due—Provision for deduction to be made from wages before payment—Deduction of sum for purpose of paying employee's contribution to trade union—Whether agreement providing for deduction to be made before wages paid to employee void—Truck Act 1831, s 2. **Williams v Butlers Ltd** [1975] 2 889, QBD.

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Worker—Cutlery industry—Mirror polisher—Wages Councils Act 1945, s 23(1)—Cutlery Wages Council (Great Britain) Wages Regulation (Holidays) Order 1952 (S I 1952 No 957), Part IV, paras 6, 7. **Westall Richardson Ltd v Roulson** [1954] 2 448, ChD.

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Wilful misconduct of workman by disobedience of order—Suspension from work for two days without pay—Accepted general practice of suspension known to workman—Whether non-payment of wages in the nature of a fine or a deduction from wages—Truck Act 1831, s 25—Truck Act 1896, ss 1, 2, 3—Defence (General) Regulations 1939, reg 58A—Essential Work (General Provisions) (No 2) Order 1942 (S R & O 1942 No 1594), art 4. **Bird v British Celanese Ltd** [1945] 1 488, CA.

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Benefits or advantages in connection with any employment—Payment by worker deemed deduction from remuneration—Manager of licensed premises—Right to carry on catering business—Payment to employer in consideration of grant of right—Catering Wages Act 1943, s 10(3). **People's Refreshment House Assn Ltd v Jones** [1954] 1 317, QBD.

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Exclusion of waiters' tips—Catering Wages Act 1943, s 9(2). **Wrottesley v Regent Street Florida Restaurant Ltd** [1951] 1 566, KBD.

Joint employment of husband and wife—Employees to receive profits after fixed payment to employer—Claims by both for minimum remuneration—Catering Wages Act 1943, s 1(2) (4). **Hearst v Clark** [1955] 3 327, QBD.

Minimum remuneration—Employment of two persons at joint wage above minimum for single worker—Claim by one worker for minimum wage—Competency—'Lodging'—Sleeping accommodation—Provision of unfurnished room—Provision of full board without lodging—Catering Wages Act 1943, ss 9(1), 10(1)—Wages Regulation (Unlicensed Place of Refreshment) Order 1949 (S I 1949 No 433), Sch 1, para 3, cols 1, 2, 3, para 22(6)(7). **Parkinson v H & J Plumpton** [1954] 1 201, QBD.

Night worker—Specific jobs involving three hours' work—Requirement of remaining on premises 13 hours—Whether entitled to be paid for 13 hours—Catering Wages Act 1943, ss 1(2), 4(3)—Wages Regulation (Unlicensed Place of Refreshment Order 1949 (S I 1949 No 433), Sch 1, paras 24, 26. **English v Gunter & Co Ltd** [1957] 2 838, CA.

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Employment in undertaking—Cloakroom attendant—Absence of control over manner of doing work—No contract of service—Remuneration by tips—No 'employment in undertaking'—'Deemed to be employed'—Catering Wages Act 1943, s 1(2), (4). **Pauley v Kenaldo Ltd** [1953] 1 226, QBD.

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 - Whether holder of passport holder of United Kingdom passport within Commonwealth Immigrants Act 1962, s 1. *See* **Commonwealth Immigrant** (Commonwealth citizen other than person holding United Kingdom passport—United Kingdom passport—'Passport issued to holder by government of United Kingdom'—Passport issued by Governor of Mauritius).
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Finding by disciplinary committee that appellant guilty of infamous conduct in a professional respect—Sentence—Erasure of name from register—Whether appellate tribunal would interfere with disciplinary committee's discretion as to sentence—Medical Act 1956, s 33(1). **McCoan v General Medical Council** [1964] 3 143, PC.

Nature of appeal to Privy Council—Medical Act 1956, s 33(1)(b). **Fox v General Medical Council** [1960] 3 225, PC.

Right of appeal—

Nature of appeal—Circumstances in which Privy Council may reverse a decision of disciplinary committee. **Libman v General Medical Council** [1972] 1 798, PC.

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Discretion of committee to consider evidence of previous offences—Powers of legal assessor. **Daly v General Medical Council** [1952] 2 666, PC.

Duty of committee to hold due inquiry prior to erasure—'Infamous conduct in a professional respect'—Practitioner found guilty by divorce court of adultery—Refusal by council to hear evidence not given before divorce court—'Due inquiry'—Evidence Act 1851, s 16—Medical Act 1858, s 29. **General Council of Medical Education and Registration of the United Kingdom v Spackman** [1943] 2 337, HL.

Practitioner convicted in Malaya of criminal offence—Portions of record of convicting court excised before disciplinary committee—Admissibility—Medical Disciplinary Committee (Procedure) Rules 1951 (S 1 1951 No 665), r 63. **Ong Bak Hin v The General Medical Council** [1956] 2 257, PC.

Natural justice before committee—

Ambiguous charges preferred before committee—Charges leading to conviction whether true or false. **Sloan v General Medical Council** [1970] 2 686, PC.

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Disclosure at request of patient—Patient suffering from venereal disease—Proceedings for decree of nullity contemplated—Request by patient for disclosure of confidential information to named person—Duty of doctor. **C v C** [1946] 1 562, Assizes.

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Act done in execution of public duty—Specialist at hospital administered by hospital board—Action for negligence commenced more than one year after cause of action accrued—Whether act done in execution of public duty. **Higgins v North West Metropolitan Regional Hospital Board** [1954] 1 414, QBD.

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Bolam v Friern Hospital Management Committee [1957] 2 118, QBD.

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Act 1858, s 40. **Younghusband v Luftig** [1949] 2 72, KBD.

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[1942] 2 510, KBD.

Article consisting of or comprising a substance recommended as a medicine—Sale by retail
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Label purporting to state the active constituents of the article—Omission of one of the active
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Pharmacy and Medicines Act 1941, ss 11(1)(a), 13(1)(a). **Pharmaceutical Society of Great
Britain, v Heppels (1932) Ltd** [1945] 2 33, KBD.

Article consisting of or comprising substance recommended as a medicine—Sale by
unauthorised persons—Substance known to public as supposed remedy for particular
ailment—Name of substance and dosage given on label, but no reference to any ailment—
Pharmacy and Medicines Act 1941, ss 11(1), 12(1)(5), 17. **Potter and Clarke Ltd v
Pharmaceutical Society of Great Britain** [1947] 1 802, CA.

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Stall in market place—Movable structure but retail business carried on at same place in market twice a week—Whether stall a 'shop'—Shops Act 1912, s 19—Pharmacy Act 1941, s 12(2). **Summers v Roberts** [1943] 2 757, KBD

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Participation—Validity of decision reached by meeting. **Leary v National Union of Vehicle Builders** [1970] 2 713, ChD.

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Conferring of degrees—Complaint by member of university).

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Appeal—Whether leave required. *See Court of Appeal* (Interlocutory appeal—Leave to appeal—Necessity—Appeal against order refusing leave to proceed in respect of acts done in pursuance of Mental Health Act 1959).

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Admission for treatment—

Application—Nearest relative—Consent to application—Unreasonable objection to application—Application for substitution of acting nearest relative—Unreasonable objection—Test of unreasonableness—What reasonable person would do in all the circumstances—Mental Health Act 1959, ss 27(1)(2), 52(3)(c). *W v L (Mental Health Patient)* [1973] 3 884, CA.

Admission for treatment—

Compulsory admission—Application—Grounds for admission—Discharge—Entitlement to discharge—Application stating that patient suffering from mental illness—Patient 40 years of age—Mental health review tribunal reclassifying patient as suffering from psychopathic disorder—Psychopathic disorder in person over 21 not a ground for admission—Tribunal concluding that necessary in patient's interests and for protection of others that she should continue to be detained—Whether patient entitled to be discharged—Mental Health Act 1959, ss 26, 123. *Re V E (Mental Health Patient)* [1972] 3 373, QBD.

Admission for treatment—

Mental illness—Meaning—Patient suffering from psychopathic disorder—Patient over 21—Expression 'mental illness' not having special medical significance—Ordinary words of English language to be construed as ordinary sensible people would construe them—Whether finding of psychopathic disorder precluding finding that patient suffering from mental illness—Mental Health Act 1959, ss 4(4), 26(2). *W v L (Mental Health Patient)* [1973] 3 884, CA.

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Notice—Superannuation—Return of payments—Lunacy Act 1890, s 276—Asylums Officers' Superannuation Act 1909. *McManus v Bowes* [1937] 3 227, CA.

Superannuation—

Disputes to be settled by Minister of Health—Jurisdiction of Minister to determine whether employee 'established'—Asylums Officers' Superannuation Act 1909, ss 1, 15, 17. *R v Minister of Health, ex parte Staffordshire Mental Hospitals Board* [1942] 1 551, CA.

Bankruptcy—

Jurisdiction to make receiving order in respect of person of unsound mind. *See Bankruptcy* (Person of unsound mind—Jurisdiction to make receiving order).

Compulsory admission of patient to hospital. *See* Admission of patient to hospital—Admission for treatment—Compulsory admission, *ante*.

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Consent of nearest relative to admission of patient to hospital. *See* Admission of patient to hospital—Admission for treatment—Application—Nearest relative—Consent to application, *ante*.

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Practice—

Appointment of new trustee in place of trustee of unsound mind—Form of originating summons. *Practice Direction* [1957] 1 581, Ct of Protection.

Title of proceedings under Trustee Act 1925. *Practice Note* [1959] 3 320, Ct of Protection.

Criminal law—

Defence of insanity. *See Criminal law* (Insanity).

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Forfeiture clause—

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MENTAL HEALTH (cont)

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Cross-examination of visitor on report—Application by patient for restoration to management of own affairs—Medical visitor's report disclosed to parties—Views expressed by visitor conflicting with affidavits filed by patient's medical witnesses—Application by patient for leave to issue witness summons requiring attendance of visitor to give oral evidence—Power of court to procure attendance of visitor—Power of court to allow cross-examination of visitor on report—Circumstances in which visitor's report should be disclosed—Mental Health Act 1959, s 109(5). **Re W L W** [1972] 2 433, ChD.

Mental defective—

Detention order—

Continuation of order—Report to Board of Control by visitors recommending continuation of order—Certiorari to quash report. **R v Statutory Visitors to St Lawrence's Hospital, Caterham, ex parte Pritchard** [1953] 2 766, QBD.

Continuation of order—Whether imperative that continuance order should be made on date of expiry of previous order—Mental Deficiency Act 1913, ss 10, 11. **R v Mordey, Board of Control and East Ham Corpn, ex parte Winterflood** [1938] 2 463, CA.

Detention order in case of indictable offence—Jurisdiction to make order if satisfied on medical evidence that the offender was a defective—Evidence by prison doctor that offender was a feeble-minded person within the Act—Whether justices had jurisdiction to make order for detention in institution for defectives—Mental Deficiency Act 1913, s 8(1). **Re Sage** [1958] 1 477, QBD.

Grant of leave of absence—

Factors to be considered—Past history of patient—Inquiry by officers and committee—Negligence. **Holgate v Lancashire Mental Hospitals Board, Gill and Robertson** [1937] 4 19, KBD

Local authority responsible for providing accommodation—

Council of county or county borough in which defective resided—Person certified while in a general hospital—Place of residence immediately before admission to certified institution—Whether general hospital 'place of residence immediately before'—Liability for maintenance—Mental Deficiency Act 1913, ss 43(1), 71—Mental Deficiency Act 1927, s 9. **London County Council v Ipswich County Borough Council** [1939] 2 660, KBD.

Person committed to certified institution following conviction of criminal offence—Determination of his place of residence prior to conviction—Mental Deficiency Act 1913, s 44. **London County Council v Cambridgeshire County Council** [1936] 2 15, KBD.

Order for transfer to institution for defectives—

Date of expiration of order—Power of Board of Control to make a general order for extension—Mental Deficiency Act 1913, s 11. **R v Board of Control (Secretary), ex parte Abdul Kayum** [1948] 2 853, KBD.

Reception order on ground of being found neglected—

Found neglected—Mental Deficiency Act 1913, s 2(1)(b)(i), as amended by Mental Deficiency Act 1927, s 2. **R v Board of Control, ex parte Rutty** [1956] 1 769, QBD.

Removal to place of safety of person found neglected by person reasonably believing him to be defective—

Found neglected—Order for removal of defective to place of safety—Whether defective 'found neglected'—Subsequent order for detention made by judicial authority in 1925 on petition of one parent—Other parent abroad—Whether other parent's consent in writing necessary—Mental Deficiency Act 1913, ss 6 [3], proviso (a), 15(1) **Richardson v London County Council** [1957] 2 330, CA.

Mental hospital—

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Pay—Emergency during war—Nurse required to stand by for duty if necessary—Overtime—Subject to standing orders, regulations and rules—Whether nurse entitled to overtime pay in respect of periods when standing by. **Farmer v London County Council** [1943] 2 32, CA.

Nullity of marriage—

Grounds for nullity. *See Nullity (Insanity).*

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Parties. *See Practice (Parties—Actions and proceedings by and against patients).*

Patient's property—

Execution of will—

Application to judge—Parties to application—Relevant evidence—Evidence of lack of testamentary disposition—Evidence of domicile and situation of immovable property affected by proposed will—Mental Health Act 1959, ss 103(1) (dd) (3), 103A(4)—Administration of Justice Act 1969, ss 17, 18. **Practice Direction** [1970] 1 15, Ct of Protection.

Application to judge—Practice—Respondents to summons—Persons interested in relief sought by summons—Prospective legatees under existing will—Attorney-General—Whether prospective legatees or Attorney-General persons 'interested'—Whether prospective legatees or Attorney-General should be joined as respondents to summons—Mental Health Act 1959, s 103(1)(dd) (as amended by the Administration of Justice Act 1969, s 17)—Court of Protection Rules 1960 (SI 1960 No 1146), r 12(1). **Re H M F (mental patient: will)** [1975] 2 795, ChD.

Attestation—Mental Health Act 1959, s 103A, as added by Administration of Justice Act 1969, s 18. **Practice Direction** [1970] 1 15, Ct of Protection.

By whom statutory powers exercisable—Mental Health Act 1959, s 103(1)(dd)—Administration of Justice Act 1969, s 17(1). **Practice Direction** [1970] 1 208, Ct of Protection.

MENTAL HEALTH (cont)**Patient's property (cont)—****Functions of judge—**

Doing or securing the doing of all such things as appear necessary and expedient for the benefit of the patient—Benefit of patient—Meaning—Mental Health Act 1959, s 102(1)(a) (b). **Re W** [1970] 2 502, Ct of Protection.

Doing or securing the doing of all such things as appear necessary and expedient for the maintenance or other benefit of patient's family—Meaning of 'family'—Whether nephews and nieces included—Mental Health Act 1959, s 102(1)(b). **Re D M L** [1965] 2 129, Ct of Protection.

Exercise of functions—Requirements of patient—Meaning—Mental Health Act 1959, s 102 (2). **Re W** [1970] 2 502, Ct of Protection.

Gift—

Application to court for order etc—Parties to application—Evidence—Mental Health Act 1959, s 103(1)(d)—Court of Protection Rules 1960 (S I 1960 No 1146), r 21. **Practice Direction** [1970] 1 15, Ct of Protection.

Sanctioning of gift to private independent mental hospital. *See Equity* (Undue influence—Presumption of undue influence—Mental hospital and patient—Gift by patient to private independent mental hospital—Sanctioning of gift by Court of Protection).

Jurisdiction—

Management of property of patient—Beneficiary of unsound mind absolutely entitled—Trustees seeking to retain capital—Summons heard in Chancery Division—Whether within Chancery jurisdiction—Discretion. **Re K's Settlement Trusts** [1969] 1 194, ChD.

Settlement—

Application to court for order etc—Parties to application—Evidence—Mental Health Act 1959, s 103(1)(d)—Court of Protection Rules 1960 (S I 1960 No 1146), r 21. **Practice Direction** [1970] 1 15, Ct of Protection.

Costs—Taxation—Costs of successful applicants, interested parties and receiver, when respondent qua receiver, should be taxed on common fund basis—Costs of Official Solicitor, appearing for patient, should be taxed on solicitor and own client basis—Supreme Court Costs Rules 1959, r 28—Court of Protection Rules 1960 (S I 1960 No 1146), r 98. **Re C E F D** [1963] 1 685, Ct of Protection.

Forfeiture clause—Forfeiture in event of income to which patient entitled becoming charged in favour of another—Receiver of life tenant's property appointed—Percentage charged on lunatic's estate—Whether patient forfeiting interest under settlement. **Re Westby's Settlement** [1950] 1 479, CA.

Illegitimate son—Recognition of moral obligation for care of son, and inclusion of son in father's family home—Patient not of testamentary capacity and without chance of mental improvement—Patient had made no will—His next of kin were cousins who had not visited him—Proposed revocable settlement of patient's property on illegitimate son and son's family approved in principle—Mental Health Act 1959, ss 102(1)(c), 103(1)(d). **Re T B** [1966] 3 509, Ct of Protection.

Persons for whom patient might be expected to provide—Assumptions regarding circumstances—Circumstances assumed to be those of patient while incapacitated, save that he was assumed sane and reasonably advised—Patient maintained in state hospital at small annual expense—No prospect of recovery—No will made and intestacy certain—Voluntary settlement on nephews and niece and their families, and a sum for family chauffeur who had looked after patient—Mental Health Act 1959, ss 102(1)(c), 103(1)(d). **Re W J G L** [1965] 3 865, Ct of Protection.

Persons for whom patient might be expected to provide—Funds settled by patient's father on her for life and after her death for remaindermen—Remaindermen were patient's nephews and nieces—Patient obtained £35,000 capital from partition of settled funds under sanction of court—Proposed provision by spending £35,000 in purchase of an annuity and out of surplus income of patient augmented by annuity paying premiums on 22 policies, one for benefit of each remainderman—No evidence any of remaindermen in special need—No evidence patient felt any special affection for them—Whether court would sanction proposed provision—Mental Health Act 1959, ss 102(1)(c), 103(1)(d). **Re D M L** [1965] 2 129, Ct of Protection.

Reservation of power of revocation to patient—Law of Property Act 1925, s 171(5). **Re C W M** [1951] 2 707, CA.

Resettlement of settled property—Object to provide for poorer members of wealthy patient's family—Patient a bachelor aged 48 incapable of managing affairs but not insane—Fiscal aspect—Primogeniture where no mansion house or estate, but valuable town property—Patient capable of marrying—Discretionary settlement to confer power of revocation on patient's behalf during first 15 years—Mental Health Act 1959, s 103(1)(d)(i) (2). **Re R H C** [1963] 1 524, Ct of Protection.

Restraint from squandering property—Form of settlement—Law of Property Act 1925, s 171(1)(5)(7). **Re C** [1960] 1 393, Ct of Protection.

Statutory powers—

Management of property of patient—Settlement or gift of any property of patient for maintenance or benefit of patient's family, or for making provision for other persons—By whom statutory powers exercisable—Mental Health Act 1959, ss 102(1)(b)(c), 103(1)(d). **Practice Direction** [1960] 3 447, ChD.

Surrender of property under order of the court—

War savings certificates—Nomination—Succession to fund in court on death of lunatic—Lunacy Act 1890, s 123(1). **Re Stillwell** [1936] 1 757, ChD.

MENTAL HEALTH (cont)

Patient's property (cont)—

Variation of trusts—

Benefit of patient—Form of application to court—Patient's income substantially in excess of her requirements—Arrangement proposed whereby patient should give up, for the benefit of adopted children, a protected life interest and a contingent interest in remainder—Proposed arrangement one that patient would make if she were capable of managing her affairs—Approval of Chancery judge necessary on behalf of adult patient—Whether proposed arrangement for benefit of patient, although financially to her detriment—Variation of Trusts Act 1958, s 1(3). **Re C L** [1968] 1 1104, Ct of Protection.

Court of Protection—Application to determine question whether proposed arrangement beneficial to person of unsound mind—Practice under Variation of Trusts Act 1958, s 1(3). **Practice Note** [1959] 3 897, Ct of Protection.

Will—

Drafting—Reasons for disposing of patient's property in manner intended—Mental Health Act 1959, s 103A(5) (as added by Administration of Justice Act 1969, s 18). **Practice Direction** [1970] 1 15, Ct of Protection.

Sealing—Mental Health Act 1959, s 103A(1) (as added by the Administration of Justice Act 1969, s 18). **Practice Direction** [1970] 1 15, Ct of Protection.

Person of unsound mind—

Trustee—

Appointment of new trustee in place of trustee of unsound mind. *See Trust and trustee* (Appointment of new trustee—Trustee of unsound mind—Appointment in place of person of unsound mind).

Protection in respect of acts done in pursuance of statute—

Leave to bring proceedings—

Applicant to satisfy judge of substantial ground for contention that proposed defendant has acted in bad faith or without reasonable care—Application for leave to bring action against duly authorised officer—Removal to mental hospital—Whether reasonable ground, for believing that person was of unsound mind—Lunacy Act 1890, ss 14(1), 20 (as amended by National Health Service Act 1946, g 50, Sch 9, Part 1), 330(2) (as amended by Mental Treatment Act 1930, s 16(1)). **Re Buxton v Jayne (intended action)** [1960] 2 688, CA.

Applicant to satisfy judge of substantial ground for contention that proposed defendant has acted in bad faith or without reasonable cause—Substantial ground—Lunacy Act 1890, s 330(2) (as substituted by Mental Treatment Act 1930, s 16(1)). **Richardson v London County Council** [1957] 2 330, CA.

Onus on applicant—Applicant to satisfy judge of substantial ground for contention that proposed defendant has acted in bad faith or without reasonable care—Duty of judge to consider all evidence including that adduced on behalf of proposed defendant—Not enough for applicant to show conflict of evidence—Duty of judge to consider inherent probabilities of matter—Mental Health Act 1959, s 141(2). **Carter v Commissioner of Police for the Metropolis** [1975] 2 33, CA.

Patient in hospital—Act of nurse exercising duty of controlling patients—Act of nurse in exercise of duty not expressly provided for in statute—Patient alleging assault by nurse—Whether alleged assault done or purportedly done 'in pursuance of' statute—Whether leave required to bring criminal proceedings—Mental Health Act 1959, s 141(1)(2). **Pountney v Griffiths** [1975] 2 881, HL.

Wrongful detention—Application for leave to bring action for wrongful detention—Mental Treatment Act 1930, s 16(2). **Re an Intended Action by Frost** [1936] 2 182, CA.

Rate-aided patient—

Maintenance—

Old age pension—Public assistance officer appointed receiver—Form of order—Widows', Orphans' and Old Age Contributory Pensions Act 1936, s 21(1), Sch III. **Re T R M** [1938] 4 194, CA.

Registration of residential homes for mentally disordered persons—

Conditions of registration—

Appeal—Whether refusal to re-register—Whether right of appeal to magistrates—National Assistance Act 1948, s 37(3)—Mental Health Act 1959, s 20. **The Retarded Children's Aid Society Ltd v London Borough of Barnet** [1969] 1 300, QBD.

Settlement—

Patient's property. *See Patient's property—Settlement, ante.*

Sexual intercourse with patient. *See Criminal law* (Sexual intercourse—Mental defective).

Statutory powers—

Management of patient's property. *See Patient's property—Statutory powers, ante.*

Succession on intestacy. *See Intestacy* (Succession—Person of unsound mind).

Tort—

Mentally disordered person—

Liability. *See Tort* (Mentally disordered person).

Trustee of unsound mind. *See Court of Protection—Practice—Appointment of new trustee in place of trustee of unsound mind, ante.*

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MENTAL HEALTH OFFICER

National health service—

Superannuation. *See National health service* (Superannuation of officers—Determination of questions by Minister of Health—Mental health officer).

MENTAL HOSPITAL

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MENTAL INJURY

Assault occasioning bodily harm *See Criminal law* (Assault—Occasioning bodily harm—Mental injury).

MENTAL SHOCK

Damages for. *See* **Damages** (Remoteness of damage—Mental shock).

Negligence—

Rescue work—

Duty to rescuer. *See* **Negligence** (Duty to take care—Rescuer—Mental shock).

MERCANTILE AGENT

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MERCANTILE MARINE

War pension. *See* **War pension** (Mercantile marine).

MERCHANT SHIP

Crew member—

Right of master at common law to arrest and confine. *See* **False imprisonment** (Merchant ship—member of crew—Right of master at common laws to arrest and confine).

MERCHANTABLE QUALITY

Sale of goods—

Implied condition as to merchantable quality. *See* **Sale of goods** (Implied condition as to merchantable quality).

MERGER

Assignment of life interest to beneficiary contingently entitled to absolute reversionary interest in trust property. *See* **Trust and trustee** (Merger of beneficial interest—Absolute entitlement—

Assignment of life interest to beneficiary contingently ent

Attempt to commit crime. *See* **Criminal law** (Attempt—Full offence committed—Merger).

Contract. *See* **Contract** (Merger).

Life interest of—

Estate duty. *See* **Estate duty** (Passing of property—Enlargement of life interest).

Registered land—

Transfer. *See* **Land registration** (Transfer—Merger).

Sale of land—

Merger of contract in conveyance. *See* **Sale of land** (Merger of contract in conveyance).

Succession to trade for tax purposes. *See* **Income tax** (Succession to trade—Merger).

MESNE PROFITS

Administration of deceased's estate—

Recovery of possession and mesne profits. *See* **Administration of estates** (Sale for purposes of administration—Recovery of possession for purposes of sale—Recovery of mesne profits).

METRICATION

Paper sizes—

Taxation of costs. *See* **Costs** (Taxation—Documents—System of charging—Paper sizes).

MILEOMETER

False mileage recorded on mileometer of motor car—

False trade description. *See* **Trade description** (False trade description—Meaning of trade description—Indication of previous history including ownership or use—Previous use—Motor car—Mileage).

False trade description. *See* **Trade description** (False trade description—Meaning of trade description).

MILITARY SERVICE

Soldier's or mariners privileged will—

Actual military service. *See* **Will** (Soldier's or mariner's privileged will—Actual military service).

MILK

Generally. *See* **Food and drugs** (Milk).

Misrepresentation as to quantity. *See* **Weights and measures** (Misrepresentation as to quantity of goods).

MILK MARKETING

Complaint—

Reference to committee of investigation—

Duty of Minister in relation to complaint—Mandamus—Agricultural Marketing Act 1958, s 19(3). **Padfield v Minister of Agriculture, Fisheries and Food** [1968] 1 694, HL.

Contract—

Provision for stop notices on seven days' default by purchaser—

Subsidiary agreement for non-issue of stop notices on certain conditions—Implied term that stop notices issuable immediately on breach of subsidiary agreement. **Milk Marketing Board v Lawrence** [1939] 3 483, KBD.

Explanatory leaflet—

Representation—

Warranty—Reference to prevention of undercutting. **Milk Marketing Board v C Warman & Sons** [1937] 3 541, KBD.

Scheme—

Costs of operating scheme—

Method of computing contributions payable by milk producers—Whether costs include loss from sale of surplus milk—Agricultural Marketing Act 1931, s 1(8)—Scottish Milk Marketing Scheme (Approval) Order 1933, s 24(2). **Ferrier v Scottish Milk Marketing Board** [1936] 2 1131, HL.

Determination of prices—

Exceptional quotations—Average of mean prices—Milk Act 1934, s 4. **United Dairies (Wholesale) Ltd v Lemon and Milk Marketing Board** [1937] 2 618, CA.

MILL

Interference of flow of river to mill by local authority. *See* **Water and watercourses** (Flow of water—Mill deriving water power from river—Interference with flow of water by local authority).

MILL GEARING

Fencing—

Factory. *See* **Factory** (Dangerous parts of machinery—Duty to fence—Mill gearing).

MINE

Application for ancillary rights—

Jurisdiction of Railway and Canal Commission Court—

Declaration—Repair of highway—Mines (Working Facilities and Support) Acts 1923 and 1925. *Re An Application by T Ryan Somerville & Co Ltd* [1937] 1 507, Ry & Can Com.

Coal mine—

New South Wales. *See* **New South Wales** (Coal mining—Lease).

Coal mine. *See* **Coal Mining**.

Drainage rates—

Exemption. *See* **Land drainage** (Drainage rates—Exemption—Underground land).

Flooding—

Coal mine. *See* **Coal mine** (Flooding).

Gold mine—

Tributer's agreement—

Australia. *See* **Australia** (Mine—Gold mine—Tributer's agreement).

Grant of working facilities—

Application—

Interim order pending determination of status quo—Jurisdiction—Implied or inherent jurisdiction to make interim order—Company working hardstone under lease of quarry—Company applying for right to continue working on expiry of lease—Lessor opposing application—Lease expiring before application heard—Company applying for interim order to continue working pending hearing—Whether court having jurisdiction to make interim order—Mines (Working Facilities and Support) Act 1966, s 1 (as amended by the Mines (Working Facilities and Support) Act 1974, s 1). *Re W J King & Sons Ltd's Application* [1976] 1 770, CA.

Isle of Man. *See* **Isle of Man** (Mines and minerals).

Licence to mine. *See* **Licence** (Mining licence).

Machinery—

Maintenance—

Statutory duty—Coal mine. *See* **Coal mining** (Statutory duty—Machinery—Maintenance of machinery).

Manager—

Duty—

Security of road and working place—Coal mine. *See* **Coal mining** (Statutory duty—Security of road and working place—Duty of manager).

Mineral licence—

New Zealand. *See* **New Zealand** (Mine—Mineral licence).

Minerals—

Exception and reservation—

Underground workings—Right to win, work, get and carry away minerals—Whether licensees were, by virtue of the exception, entitled to go on surface of the land in search of gypsum. *General Accident Fire and Life Assurance Corpn Ltd v British Gypsum Ltd* [1967] 3 40, ChD.

Reservation—

Implied term—Right to work implied in reservation—Reservation in respect of petroleum—Meaning of 'petroleum'—Vernacular, not scientific, meaning to be sought—Right of occupier of land to natural gas within the land. *Borys v Canadian Pacific Ry Co* [1953] 1 451, PC.

Right to work—

Application for grant of right to work—Power to confer right on any person having an interest in the minerals—Interest—Meaning—Proprietary interest—Gravel and sand quarries—Mining lease—Application by tenant a week before expiry of lease—Tenant having no proprietary interest in minerals when application heard—Mines (Working Facilities and Support) Act 1923, s 1(1). *Re East Yorkshire Gravel Co Ltd's Application* [1954] 3 631, ChD.

Compensation to be paid in respect of right—Brickearth—Applicants obtained planning permission to win and work brick earth in site on respondents' farm—Site allocated to be used for winning and working brick earth by development plan—Application to court for right to work—Agreed grant by way of lease for 21 years—Nature of compensation—Scope of compensation—Compensation should be in form of lump sum with no deduction in respect of tax—Mines (Working Facilities and Support) Act 1923, ss 6(1), 9(1)(2). *Re Associated Portland Cement Manufacturers Ltd's Application* [1965] 2 547, ChD.

Compensation to be paid in respect of right—Fair and reasonable between a willing grantor and a willing grantee—Right of electricity board to have condition imposed on mineral undertaker not to withdraw support from pylons on the land—Mines (Working Facilities and Support) Act 1923, ss 8(1), 9(2), 11. *Re Naylor Benzon Mining Co Ltd* [1950] 1 518, ChD.

Compensation to be paid in respect of right—Grant of right subject to compensation of owners—Whether owners could be awarded compensation for apprehended damage. *Re Beckermert Mining Co Ltd's Application* [1938] 1 389, Ry & Can Com.

Mining licence—

New South Wales. *See* **New South Wales** (Licence—Mining licence).

MINE (cont)

Mining operations—

Town and country planning—

Enforcement notice—Validity. *See* **Town and country planning** (Enforcement notice—Validity—Mining operations).

Railway lines above ground at mines—

Safety precautions—

Duty to ensure that if material placed at distance less than three feet from track and employee required to pass it material so placed that employee could pass without risk of exposure to injury—Railway above ground—Bank of spoil placed less than three feet from track—Loose material on route for shunter going in course of duty from one point to another—Route, formerly safe, obstructed and side of bank sloping steeply towards track—Shunter not warned—Shunter preceding train, slipped on bank, fell between railway wagons and was killed—Whether negligence on part of employers of shunter—Whether shunter 'required' in the course of his duty to pass on foot over that material or between it and the line—Whether breach of statutory duty—Whether contributory negligence by shunter—Coal and Other Mines (Sidings) Order 1956, (S I 1956 No 1773), Sch, reg 20. **Smith (formerly Westwood) v National Coal Board** [1967] 2 593, HL.

Road—

Construction and maintenance—

Statutory duty—Coal mine. *See* **Coal mining** (Statutory duty—Road—Construction and maintenance).

Roof support—

Construction and maintenance—

Coal mine. *See* **Coal mining** (Statutory duty—Support of roof).

Safety of roads and working places—

Statutory duty to secure safety of roads and working places—

Duty of keeping road secure—Methods of security prescribed by statute must be adopted, though other proper methods available—Obligation involving duty to prevent foreseeable insecurity emerging—Clay mine—Manager having knowledge that shot-firing likely to affect sides of road—Failure to prevent movement of strata or to provide support before shot-firing—Evidence that putting up supports to prop up clay walls was contrary to good mining practice—Fall of clay on workman—Workman in course of inspecting and trimming site which fell on him—Mines and Quarries Act 1954, s 48(1). **John G Stein and Co Ltd v O'Hanlon** [1965] 1 547, HL.

Scope of duty—Latent defect—Road cut through good, strong limestone—Junction of roadways creating wider span—Widening roadway—Roof tested after firing charges—Employee killed by subsequent fall of roof—Fall due to latent defect, cause undetectable—Whether breach of statutory duty—Mines and Quarries Act 1954, s 48(1). **Tomlinson v Beckermert Mining Co Ltd** [1964] 3 1, CA.

Security of roof—Gypsum mine—Duty of mine owner—So far as may be reasonably practicable—Metalliferous Mines Regulation Act 1872, s 23—Metalliferous Mines General Regulations 1938, (S R & O 1938 No 630), reg 7(3). **Marshall v Gotham Co Ltd** [1954] 1 937, HL.

Shaft—

Safety precautions—

Entrance barrier—Coal mine. *See* **Coal mining** (Statutory duty—Safety precautions at entrance to shafts—Barriers to be maintained).

Shot-firing—

Coal mine, in—

Statutory duty. *See* **Coal Mining** (Statutory duty—Shot-firing).

Statutory duty to secure safety of roads and working places. *See* **Safety of roads and working places, ante.**

Support—

Support of roof—

Duty of master to servant to provide safe system of work—Contractor undertaking tunnelling and following expert advice of mine owner—Accident to contractor's employee due to insufficient support to roof—Whether contractor liable. **Szumczyk v Associated Tunnelling Co Ltd** [1956] 1 126, Assizes.

Ventilation—

Statutory duty—

Coal mine. *See* **Coal Mining** (Statutory duty—Provision of ventilation).

Working facilities—

Application—

Costs. *See* **Costs** (Mining application—Application in respect of working facilities).

Coal mine. *See* **Coal mining** (Working facilities).

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Ancillary rights—Coal. *See* **Coal mining** (Ancillary rights—Grant).

MINEFIELD

Foreshore—

Injuries to children—

Exclusion of right of action for damages. *See* **War injury** (Exclusion of right of action for damages—Exclusion of right when injury war injury—Minefield on foreshore—Injuries to children).

MINERAL LICENCE

New Zealand. *See* **New Zealand** (Mine—Mineral licence).

MINERALS

Compensation to be paid in respect of right to work minerals. *See* **Mine** (Minerals—Right to work—Compensation to be paid in respect of right to work).

MINERALS (cont)

Crown—

Right to minerals etc—

Isle of Man. *See* **Isle of Man** (Mines and minerals—Crown rights to minerals, flagg, slate and stone).

Exception and reservation, of. *See* **Mine** (Minerals).

Right to work minerals. *See* **Mine** (Minerals—Right to work).

See **Quarry** (Minerals—Right to work).

MINES

Rents—

Income tax. *See* **Income tax** (Mining rents).

MINES AND QUARRIES

Quarry. *See* **Quarry**.

MINI-CAB

Plying for hire. *See* **Road traffic** (Hackney carriage—Plying for hire—Mini-cab).

MINIMUM WAGE

Coal mine—Workman. *See* **Coal mining** (Workman—Minimum wage).

MINING

Enforcement notice—Validity. *See* **Town and country planning** (Enforcement notice—Validity—Mining operations).

Lease—

Settlement. *See* **Settlement** (Mining leases).

Permitted development. *See* **Town and country planning** (Development—Permitted development—Development by mineral undertakers).

MINING LEASE

Coal. *See* **Coal mining** (Mining lease).

MINING RENTS

Income tax. *See* **Income tax** (Mining rents).

MINISTER OF CROWN

Action against—

Competency. *See* **Crown** (Action against Minister of Crown—Competency).

Delegation of powers—

Secretary of State for Trade—

Petition to wind up company presented on behalf of Secretary of State. *See* **Company** (Compulsory winding-up—Petition by Secretary of State—Secretary of State taking view that it is expedient in public interest that company be wound up—Secretary of State—Petition presented by Inspector of Companies on behalf of Secretary of State).

Discretion—

Judicial control. *See* **Public authority** (Statutory powers—Duty of minister).

Powers—

Control of local education authority. *See* **Education** (Local education authority—Power of Secretary of State to prevent unreasonable exercise of functions).

Quasi-judicial function. *See* **Natural justice** (Quasi-judicial function—Minister).

MINISTER OF HEALTH

Duty to provide treatment by means of service of specialists. *See* **National health service** (Specialist services—Duty of minister to provide treatment by means of service of specialists).

Hospital—

Vesting in Minister of Health—

Effect. *See* **National health service** (Hospital—Vesting in Minister of Health—Effect).

MINISTER OF RELIGION

Income tax—

Perquisites or profits from office or employment—

Occupation of house. *See* **Income tax** (Emoluments from office or employment—Perquisites or profits—Occupation of house—Rates and property tax paid by employers—Minister of religion).

Official residence—

Rates—

Occupation—Premises left empty. *See* **Rates** (Rateable occupation—Premises left empty—Intention to occupy—Charity—Ecclesiastical corporation).

MINOR

Acceptance of child as one of family—

Assumption of parental responsibility—

Liability for maintenance—Children of wife by previous marriage—Whether children accepted as members of the new family—Whether and to what extent husband had assumed responsibility for children's maintenance—Liability of former husband for maintenance—Matrimonial Proceedings (Magistrates' Courts) Act 1960, ss 2(1)(h) (5), 16 (1). **Bowlas v Bowlas** [1965] 3 40, CA.

Child en ventre de sa mère at time of marriage—

Child not husband's child—Acceptance of child by husband before marriage as child of the family—Liability of putative father—No proceedings taken by wife against putative father—Effect as regards maintenance order against husband—Matrimonial Proceedings (Magistrates' Courts) Act 1960, ss 2(1)(h) (5), 16(1). **Callar v Callar (by her Guardian)** [1966] 2 754, Div.

MINOR (cont)

Acceptance of child as one of family (cont)—

Discretion as to maintenance—

Children not children of husband—Children illegitimate children of wife—Children accepted by husband as children of the family—Wife in desertion—Exercise of discretion to award maintenance in respect of children. *Kirkwood v Kirkwood* [1970] 2 161, Div.

Effect of acceptance—

Maintenance—Child not a child of husband—Child accepted by husband as one of the family—Liability of child's father to maintain child—Matrimonial Proceedings (Magistrates' Courts) Act 1960, s 2(5). *Roberts v Roberts* [1962] 2 967, Div.

Knowledge of material facts necessary for acceptance—

Material fact—Failure to disclose child's illegitimacy—Whether wife's failure to disclose illegitimacy of children material fact—Matrimonial Proceedings (Magistrates' Courts) Act 1960, s 16(1). *Kirkwood v Kirkwood* [1970] 2 161, Div.

Mutuality—

Child of previous marriage—Whether mutuality necessary for acceptance of child as child of the family—Matrimonial Proceedings (Magistrates' Courts) Act 1960, ss 2(5), 16(1). *Dixon v Dixon* [1967] 3 659, Div.

Time for acceptance—

Marriage—Acceptance by husband of wife's child—Unconditional acceptance at time of marriage—Mutuality of parties—Exercise by husband of parental control prior to and at time of marriage with wife's consent—Subsequent withdrawal by wife of children from husband's control within short time of marriage—Acceptance of child at time of marriage constituting it child of the family—Subsequent events irrelevant—Matrimonial Proceedings (Magistrates' Courts) Act 1960, ss 2(1)(h), 16(1). *Snow v Snow* [1971] 3 833, CA.

Action—

Adoption of action on attaining full age. *See Practice* (Persons under disability—Minor—Adoption of action on attaining majority).

Adoption—

Illegitimate child—

Putative father's application. *See Custody*—Illegitimate child—Putative father's application, *post*.

Adoption society—

Evidence. *See Guardianship*—Evidence—Production of records and giving of evidence by adoption society or local authority, *post*.

Affiliation. *See Affiliation*.

Agent—

Disposition of minor's property—

Disposition by agent—Voidability. *G (A) v G (T)* [1970] 3 546, CA.

Applications—

Chancery Division—

Chambers—Contested applications in which witnesses to be cross-examined. *See Practice* (Chambers proceedings—Adjournment to judge—Infants—Contested applications relating to infants in which witnesses to be cross-examined).

Applications in respect of—

Practice—

Family Division. *See Child* (Practice—Matrimonial causes—Applications relating to children).

Arrangement affecting interest of minor—

Variation of trusts—Evidence. *See Variation of trusts* (Practice—Arrangements—Evidence—Arrangement affecting interests of infants or unborn beneficiaries).

Arrears of maintenance. *See Maintenance*—Arrears, *post*.

Assignment of property—

Copyright—

Written contract—Effect of subsequent repudiation—Copyright passing by assignment by virtue of words of written contract—Contract by infant and adult with publishers for the writing of a book for infant and that publishers should have exclusive right to print, publish and sell—Infant and adult joint owners of copyright—Contract voidable if not for infant's benefit—Election by infant to repudiate contract—Validity of assignment on infant's subsequent election not to be bound by contract—Whether contract for infant's benefit—Copyright Act 1956, ss 19(1), 37(1). *Chaplin v Leslie Frewin (Publishers) Ltd* [1965] 3 764, CA.

Bankruptcy—

Jurisdiction to make receiving order against minor. *See Bankruptcy* (Receiving order—Jurisdiction to make order—Infant).

Blood test to determine paternity. *See Paternity* (Blood test).

Care—

Local authority. *See Child* (Care—Local authority).

Care and control. *See Custody*—Care and control, *post*.

Care and upbringing—

Arrangements required before decree absolute of divorce between parents. *See Divorce* (Decree absolute—Arrangements for care and upbringing of children).

Change of surname—

Divorce of parents—

Mother having custody—Remarriage of mother—Deed-poll executed without father's consent purporting to change infant's surname to that of her second husband—Whether deed-poll effective. *Re T (otherwise H) (an infant)* [1962] 3 97, ChD.

Mother having custody—Remarriage of mother—Rights of mother as custodian—Rights of father as natural guardian—Interests of child—Whether mother or father having unilateral right to change surname of child. *Y v Y (child: surname)* [1973] 2 574, PDA.

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Change of surname (cont)—

Procedure—

Statutory declaration—Execution of deed poll—Consent of minor over 16—Consent of both parents—Affidavit in support. **Practice Direction** [1969] 3 288.

Child of the family—

Maintenance—

Divorce proceedings. *See* **Divorce** (Financial provision—Child—Maintenance).

Compromise of action—

Approval of court for. *See* **Practice** (Compromise of action—Approval of court—Approval on behalf of infant).

Contract—

Apprenticeship—

Benefit of minor. *See* **Master and Servant** (Apprenticeship—Benefit of infant).

Liability—

Whether contract for minor's benefit. *See* Assignment of property—Copyright, *ante*.Liability in tort for act founded on contract. *See* Tort—Tort founded on contract, *post*.

Necessaries—

Agreement to purchase motor lorry—Whether a contract for necessaries. **Mercantile Union Guarantee Corpn Ltd v Ball** [1937] 3 1, CA.Gifts to person to whom minor engaged to be married—Rings—Whether necessaries. **Elkington & Co Ltd v Amery** [1936] 2 86, CA.

Court proceedings in relation to children—

Practice. *See* **Child** (Practice—Court proceedings in relation to children).

Criminal offence—

Compensation—

Parent or guardian's liability. *See* **Sentence** (Compensation—Parent or guardian's liability).

Custody—

Access—

Adopted child—Welfare of child—Right of access—Access to be regarded as a right of child rather than parent—Fact that child adopted irrelevant—Custody awarded to father—Circumstances in which mother may be deprived of access. **M v M (child : access)** [1973] 2 81, FamD.Application for order regarding right of access—Extent of court's jurisdiction—High Court—County court—Mother having custody of infant—Father having right of access—Mother living in England with infant—Father living in Switzerland—Father applying for order permitting infant to visit him in Switzerland—Whether court having jurisdiction to make order permitting removal of infant out of jurisdiction—Guardianship of Minors Act 1971, s 9. **Re F (a minor) (access out of jurisdiction)** [1973] 3 493, FamD.Variation of order—Jurisdiction of court of summary jurisdiction where applicant resides—Guardianship and Maintenance of Infants Act 1951, s 1(1)—Children Act 1948, s 53. **Re D (an infant)** [1953] 2 1318, CA.

Appeal from magistrates' court—

Change of custody—Stay pending appeal—Magistrates' order transferring custody from mother to father—Principles regulating grant of stay pending appeal. **Re S (an infant)** [1958] 1 783, ChD.Costs—Award against mother whose appeal fails. **Re SL (infants)** [1967] 3 538, ChD.

Application of mother or father—

Jurisdiction of court to award custody to person other than parent or guardian—Guardianship of Minors Act 1971, s 9(1). **Re R (an infant) (custody to non-parent)** [1974] 1 1033, FamD.

Boy—

Custody of father—Boy of eight—Whether a principle that he should be with father. **Re C (A) (an infant)** [1970] 1 309, CA.

Care and control—

Religious education—Whether custody, in addition to care and control, should be granted. **Re M (infants)** [1967] 3 1071, CA.

Child of tender years—

Custody of mother—No rule of law that mother is entitled to custody. **Re B (an infant)** [1962] 1 872, CA.Conflict of laws. *See* **Ward of court** (Jurisdiction).Division of custodial rights. *See* Division of custodial rights, *post*.Divorce proceedings, in. *See* **Divorce** (Custody).

Illegitimate child—

Conflict between mother and natural father—Welfare of child paramount consideration. **Re A (an infant)** [1955] 2 202, CA.Putative father's application—Adoption application made by mother, in whose custody child was, and her husband—Advantage to child of ceasing to be a bastard outweighing loss of connection with real father. **Re E (P) (an infant)** [1969] 1 323, CA.Putative father's application—Adoption application made by proposing adopters—Both applications to be heard before judgment given on either—Legitimacy Act 1959, s 3. **Re O (an infant)** [1964] 1 786, CA.Putative father's application—Adoption application made by proposing adopters—Boy placed by mother with adopters—Adopters in every way suitable, and Roman Catholics, in which religion mother wanted boy brought up—Father wanting custody of boy and offering home with his wife—Wife wishing to accept boy—Father and wife Protestants, but not practising members of their religious denomination—Father and wife 47 years of age, boy 18 months—Adopters younger than the father—Blood tie between father and son. **Re C (M A) (an infant)** [1966] 1 838, CA.Putative father's application—Jurisdiction of justices—Jurisdiction of judge of Chancery Division of High Court on appeal by putative father from decision of justices—Guardianship of Infants Act 1886, s 5 (as amended by Administration of Justice Act 1928, s 16). **Re C T (an infant)**, **Re J T (an infant)** [1956] 3 500, ChD.

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Custody (cont)—

Illegitimate child (cont)—

Weight to be given to father's wishes. **Re C (A) (an infant)** [1970] 1 309, CA.

Jurisdiction—

Magistrates' court—Divorce pending—Adjournment of proceedings—Propriety—Party proposing to bring divorce suit—Justices adjourning custody proceedings pending divorce—Effect to suspend decision on child's future for considerable period—Jurisdiction of justices to make custody order while divorce proceedings pending. **Jones (E G) v Jones (E F)** [1974] 3 702, CA.

Removal of proceedings to High Court—Proceedings instituted in court of summary jurisdiction—Whether proceedings can be removed into High Court—Guardianship of Infants Act 1886, ss 5, 9, 10—Guardianship of Infants Act 1925, s 7—R S C Ord 55A, r 5. **Beaumont v Beaumont** [1938] 2 226, CA.

Legitimated child—

Child of the marriage—No formal declaration of legitimacy—Summary Jurisdiction (Married Women) Act 1895, s 5(b)—Married Women (Maintenance) Act 1920, s 1(1)—Supreme Court of Judicature (Consolidation) Act 1925, ss 188(1), 193(1)—Legitimacy Act 1926, s 1(1). **C v C** [1947] 2 50, Div.

Order—

Breach—Breach by father of order made in favour of mother—Committal of father to prison for fixed term—Sentence suspended—Refusal to grant stay of execution—Power of Divisional Court to review committal order—Powers of magistrates—Magistrates' Courts Act 1952, s 54(3)—Administration of Justice Act 1960, s 13—Criminal Justice Act 1967, s 39—R S C Ord 109, r 2(2). **B (B) v B (M)** [1969] 1 891, PDA.

Enforcement of overseas order—Order made by Australian court—Enforcement in England. **Harris v Harris** [1949] 2 318, Div.

Previous order of foreign court—Variation of order—Welfare of infant paramount consideration. **McKee v McKee** [1951] 1 942, PC, **Re B's Settlement** [1951] 1 949, ChD.

Revocation of order in wife's favour—No misconduct by wife—Welfare of child paramount consideration—Guardianship of Infants Act 1925, s 1. **Chipperfield v Chipperfield** [1952] 1 1360, Div.

Orphan—

Religious upbringing—Conflict between grandparents—Father's direction as to religion of child—Welfare of child paramount consideration—Guardianship of Infants Act 1925, s 1. **Re Collins (an infant)** [1950] 1 1057, CA.

Proceedings in private—

Transcripts. *See* **Child** (Practice—Court proceedings in relation to children—Proceedings in private—Publication of information—Transcripts).

Summons incidental to divorce proceedings—

Costs. *See* **Divorce** (Costs—Co-respondent—Costs of incidental proceedings after decree).

Welfare of minor as first and paramount consideration—

Parents—Right of parents to custody subordinate to welfare of minor—Order for custody and adoption order contrasted—No consideration of comity arising out of nationality of parents—Guardianship of Infants Act 1925, s 1. **J v C** [1969] 1 788, HL.

Relevance of other considerations—Mother's conduct—Weight to be attached to other considerations dependent on how they affect children's welfare—Guardianship of Minors Act 1971, ss 1, 9(1). **Re D (minors) (wardship: jurisdiction)** [1973] 2 993, FamD.

Welfare not the exclusive consideration—Consideration of all relevant circumstances—Guardianship of Infants Act 1925, s 1. **Re F (an infant)** [1969] 2 766, ChD.

Damages—

Control of money recovered for personal injury. *See* **Money recovered**—Control, *post*.

Damages. *See* **Damages** (Infant).

Damages recovered by minor—

Jurisdiction of court to postpone entitlement until after attainment of majority. *See* **Variation of trusts** (Jurisdiction—Damages recovered by infant).

Death of divorced father—Maintenance. *See* **Maintenance**—Child of divorced parents—Death of divorced father, *post*.

Division of custodial rights—

Jurisdiction of justices to divide custody—

Circumstances in which division of custody rights appropriate—Guardianship of Minors Act 1971, s 9. **Jussa v Jussa** [1972] 2 600, FamD.

Division of custodial rights

Jurisdiction of justices to divide custody—

Custody granted to one parent, care and control to other—Magistrates not empowered to make such order—Matrimonial Proceedings (Magistrates' Courts) Act 1960, ss 2(1)(d), 4. **W (C) v W (R)** [1968] 3 608, Div.

Division of custodial rights—

Jurisdiction of justices to divide custody—

Order of magistrates' court giving legal right to custody of infant to father and possession to mother—Whether court had jurisdiction to divide custody—Guardianship of Infants Act 1886, s 5. **Re W (J C) (an infant)** [1963] 3 459, CA.

Divorce—

Inclusion of name in petition. *See* **Divorce** (Petition—Form of petition).

Protection of minors. *See* **Divorce** (Infant).

Divorced parents—

Maintenance of children. *See* **Maintenance**—Child of divorced parents, *post*

Education—

Child over 16. *See* **Maintenance**—Education or training, *post*.

Divorced parents—

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Enforcement of High Court order. *See Maintenance—Enforcement of High Court order, post.*

Enforcement of justices' order— *See Maintenance—Enforcement of justices' order, post.*

Enforcement of overseas order. *See Custody—Order—Enforcement of overseas order, ante.*

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Appointment of guardian—

Application. *See Practice* (Chancery Division—Infant's estate—Application for appointment of guardian).

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Foreign custody order. *See Custody—Order—Enforcement of overseas order, ante.*

Grandparents—

Religious upbringing of orphan. *See Custody—Orphan—Religious upbringing, ante.*

Guardian—

Appointment by the court—

Jurisdiction—Infant aliens resident in England—Parents abroad—No property belonging to infants within the jurisdiction which the court is asked to administer. *Re D (infants)* [1943] 2 411, ChD.

Appointment of guardian—

Palestine. *See Palestine* (Infant—Appointment of guardian).

Maintenance—

Expenditure of private income by guardian—Statutory power of maintenance—Reimbursement of guardian—Conveyancing Act 1881, s 43. *Re Senior* [1936] 3 196, ChD.

Guardian ad litem—

Variation of trusts. *See Variation of trusts* (Infant).

Guardianship—

Appeals from courts of summary jurisdiction—

Applications in regard to two or more children of same parents—Guardianship of Infants Acts 1886 and 1925—R S C Ord 55A, r 6. *Practice Direction* [1957] 1 32, ChD.

Exercise of discretion—Circumstances changed after magistrates' decision. *Re B (T A) (an infant)* [1970] 3 705, ChD.

Appeals from county courts or courts of summary jurisdiction—

Practice—Guardianship of Infants Acts 1886 and 1925. *Practice Direction* [1955] 2 115, ChD.

Appeals from courts of summary jurisdiction—

Legal aid in connection with appeal—Extension of time—Procedure. *Practice Direction* [1969] 2 1220, ChD.

Review of exercise of discretion—Duty of appellate court. *See Appeal* Review of exercise of discretion).

Title of proceedings—Application for leave to adduce further evidence—Date of hearing of appeal—Guardianship of Infants Acts 1886 and 1925—R S C Ord 55A, Ord 59, r 34(2)(3)(4). *Practice Direction* [1960] 2 862, ChD.

Title of proceedings—Application for leave to adduce further evidence—Guardianship of Infants Acts 1886 and 1925—R S C Ord 55, r 3(1)(2), Ord 91, r 7(1)(2). *Practice Direction* [1967] 2 1232, ChD.

Application—

Contested application—Second application to justices—First application dismissed on merits—No further evidence—Not res judicata—Whether justices should hear. *Re F (W) (an infant)* [1969] 3 595, ChD.

Contested application—Witnesses to be cross-examined. *See Practice* (Chambers—Proceedings—Adjournment to judge—Infants—Contested applications relating to infants in which witnesses to be cross-examined).

Minor having no parent, guardian or other person having parental rights—Parental rights—Stepfather—Minor living in household with stepfather—Father and mother deceased—Whether stepfather a 'person having parental rights'—Guardianship of Minors Act 1971, s 5(1). *Re N (minors) (parental rights)* [1974] 1 126, FamD.

Evidence—

Production of records and giving of evidence by adoption society or local authority—Contested applications—Application to court for directions. *Practice Direction* [1968] 1 762, ChD.

Statements exhibited to affidavits. *Practice Direction* [1967] 2 299, ChD.

Joint guardianship—

Relevant factors—Benefit to minor the sole determining factor in deciding whether joint guardian should be appointed—Order not to be made for collateral purpose—Appeal from magistrates order—Guardianship of Infants Act 1925, s 4(2). *Re H (an infant)* [1959] 3 746, ChD.

Originating summons—

Form. *See Originating summons* (Guardianship of infant—Form).

Parents' position—

Illegitimate child—Whether any pre-eminence of rights of parents—Legitimacy Act 1959, s 3(1). *Re Adoption Application No 41/61* [1962] 3 553, CA.

Proceedings in private—

Transcripts. *See Child* (Practice—Court proceedings in relation to children—Proceedings in private—Publication of information—Transcripts).

High Court order—

Enforcement. *See Maintenance—Enforcement of High Court order, post.*

MINOR (cont)

Illegitimate child—

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Declaration. *See* **Legitimation** (Declaration of legitimacy).

Legitimated child. *See* Custody—Legitimated child, *ante*.

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Care. *See* **Child** (Care—Local authority).

Evidence. *See* Guardianship—Evidence—Production of records and giving of evidence by adoption society or local authority, *ante*

Magistrates—

Enforcement of order. *See* Maintenance—Enforcement of justices' order, *post*.

Jurisdiction to make custody order while divorce pending. *See* Custody—Jurisdiction—

Magistrates' court—Divorce pending, *ante*.

Maintenance—

Application—

Application to justices by mother for order against father—Venue—Child living out of England—Power of justices to make order. **R v Sandbach Justices, ex parte Smith** [1950] 2 781, KBD.

Form of summons—Parties—Condition of making order that mother should have applied for custody. **Re Dulles' Settlement Trusts** [1950] 2 1013, CA.

Arrears—

Judgment summons—No application by husband for variation of maintenance order—Order for payment of arrears by instalments and for suspension of maintenance order—Whether county court judge had jurisdiction to suspend maintenance order—Debtors Act 1869, s 5, proviso (2)—Matrimonial Causes (Judgment Summons) Rules 1952 (S I 1952 No 2209), r 6(1)(2). **Cockburn v Cockburn** [1957] 3 260, CA.

Child of divorced parents—

Age of child—Order for unsecured maintenance for child extending beyond age of 21—Matrimonial Causes Act 1950, s 26(1). **Le Mare v Le Mare** [1960] 2 280, Div.

Child of wife by previous marriage—Child accepted as one of the family after wife's remarriage—Adultery by wife four months after marriage—Husband granted decree—Exercise of discretion to award maintenance in respect of children—Matrimonial Causes Act 1950, s 26(1)—Matrimonial Proceedings (Children) Act 1958, s 1(1). **Smith v Smith and Brown** [1962] 3 369, CA.

Death of divorced father—Order made against him in his lifetime to pay maintenance for children—Whether maintenance payable out of his estate after his death—proper method of securing that maintenance should continue after husband's death—Meaning of 'cause of action'—Law Reform (Miscellaneous Provisions) Act 1934, s 1(1). **Sugden v Sugden** [1957] 1 300, CA.

Guilty wife—Order made against wife—Supreme Court of Judicature (Consolidation) Act 1925, s 193(1). **Hering v Hering and Wilson** [1943] 2 424, Div.

Investment of divorce damages for benefit of child—Death of child while an infant—Further order regarding application of fund—Form of original order. **Collins v Collins** [1952] 2 1133, CA.

Lump sum—Jurisdiction to order lump sum payment for liabilities incurred in the past by the mother—Matrimonial Causes Act 1950, s 26(1). **Freeman-Thomas v Freeman-Thomas** [1963] 1 17, Div.

Custody—

Summonses by wife under both Summary Jurisdiction and Guardianship of Infants Acts—Proper course for justices to follow. **Heworth v Heworth** [1948] 2 715, Div.

Discharge of order—

Need of fresh evidence—Evidence not available when order made—Question for court—Confirmation of wife's adultery—Guardianship of Infants Act 1925, s 3(4). **Re Wakeman** [1947] 2 74, ChD.

Divorce Division of the High Court—

Application—Leave of judge—Claim not included in wife's petition—Whether leave needed—Rule 43(3) ultra vires Matrimonial Causes Act 1950, s 29—Matrimonial Causes Rules 1957 (S I 1957 No 619), r 43(3). **Bancroft v Bancroft** [1963] 1 367, CA.

Application to High Court while magistrates' court's order existing—Copy of maintenance order of magistrates' court to be lodged. **Practice Direction** [1961] 3 1200, Div.

Practice—Discovery. *See* **Divorce** (Practice—Ancillary relief—Application for monetary provision—Discovery).

Education or training—

Continuance of order after age of 16—Matters to be considered—Interests of child—Means of parties—Married Women (Maintenance) Act 1949, s 2(2). **Nowell v Nowell** [1951] 1 474, Div.

Infant aged more than 16—Continuation of payments under previous order—Application after cessation of order—Married Women (Maintenance) Act 1949, s 2(2). **Norman v Norman** [1950] 1 1082, Div.

Enforcement of High Court order—

Attachment—Default in payment of amount of school fees—Whether writ of attachment will issue—Debtors Act 1869, s 4. **Farrant v Farrant** [1957] 1 204, Div.

Judgment summons—Order for maintenance of two children of marriage—No payment under order—Separate summons in respect of debt due to each child. **Easterbrook v Easterbrook** [1957] 2 117, Div.

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Maintenance (cont)—

Enforcement of High Court order (cont)—

Order of commitment against husband—Suspended order—Order directed to issue—Whether husband entitled to release on payment of amount not including arrears accrued since committal order made—Matrimonial Causes (Judgment Summons) Rules 1952 (S I 1952 No 2209), r 6(3). **Riding v Riding** [1958] 1 65, CA.

Summons by wife as infant's next friend—Debtors Act 1869, s 5—Matrimonial Causes Rules 1950 (S I 1950 No 1940), r 64(1). **Shelley v Shelley** [1952] 1 70, Div.

Enforcement of justices' order—

Appeal—Justices' order enforcing previous maintenance order—Right of appeal to High Court—Guardianship of Infants Act 1925, s 7(3). **Re Stern** [1950] 2 160, ChD.

Illegitimate child—

Infant born before marriage—Not legitimated per subsequens matrimonium—Matrimonial Causes Act 1950, s 26(1). **Packer v Packer** [1953] 2 127, CA, **Galloway v Galloway (ex parte)** [1955] 3 429, HL.

Income tax—

Small maintenance payments. *See* **Divorce** (Maintenance—Income tax—Small maintenance payments—Payments to be made direct to children included).

Jurisdiction—

Father foreign citizen resident abroad—Submission of father to jurisdiction of High Court. **Re Dulles' Settlement Trusts** [1950] 2 1013, CA.

Means of parent—

Mother granted custody—Means of mother taken into consideration in assessing sum payable by father—Guardianship of Infants Act 1925, s 3(2). **Re T (an infant)** [1953] 2 830, ChD. **Re W (infants)** [1956] 1 368, CA.

Order varying maintenance—

Appeal against order—Whether leave to appeal necessary. *See* **Court of Appeal** (Interlocutory appeal—Leave to appeal—Necessity—Appeal against order varying maintenance of infants).

Statutory jurisdiction—

Discharge of order—Order made under Summary Jurisdiction Acts—Order discharged—Order for custody under Guardianship of Infants Acts—Summary Jurisdiction (Married Women) Act 1895, s 5(b). **Flood v Flood** [1948] 2 712, Div.

Order made under Summary Jurisdiction Acts—Wife's subsequent application to justices for custody of children and weekly sum for their maintenance under Guardianship of Infants Acts—Competence—Summary Jurisdiction (Married Women) Act 1895, s 5(b)—Guardianship of Infants Act 1925, s 3(2). **Re Kinseth** [1947] 1 201, ChD.

Trust in favour of children—

Order for payment of annual sum to be held in trust for children—Power of court to create trust—Supreme Court of Judicature (Consolidation) Act 1925, s 193(1), (3) (added by Matrimonial Causes Act 1937, s 10(4)). **Yates (Inspector of Taxes) v Starkey** [1951] 1 732, CA.

Undertaking not to take proceedings for maintenance—

Undertaking in deed by wife petitioner—Covenant by husband to pay annuity for child—Illegality of wife's undertaking. **Bennett v Bennett** [1951] 1 1088, KBD.

Variation of order—

Application—Reference to High Court—Competency—Guardianship of Infants Act 1925, s 7(3). **Re L (infants)** [1951] 1 912, ChD.

Wilful neglect. *See* Wilful neglect to maintain, *post*.

Marriage—

Refusal of consent by justices—

Appeal—No jurisdiction in High Court to hear appeal—Marriage Act 1823—Guardianship of Infants Act 1886—Guardianship of Infants Act 1925, ss 7(3), 9(1)(a)(4), 11(2). **Re Queskey** [1946] 1 717, ChD.

Means of parent. *See* Maintenance—Means of parent, *ante*.

Money recovered—

Control—

Appointment of receiver—Damages recovered for personal injuries including brain damage whereby infant would require supervision for life—Application to be made for the appointment of a receiver—Money to be transferred to Court of Protection for administration. **M v Lester** [1966] 1 207, QBD.

Negligence. *See* **Child** (Negligence).

Negligence—

Voluntary assumption of risk. *See* **Negligence** (Volenti non fit injuria—Infant).

Next friend—

Parent—

Removal as next friend—Removal where parent acting improperly and against interests of infant—application for removal of five parents as next friends—Five parents of thalidomide children refusing to accept settlement proposed by company marketing thalidomide drug—Drug taken during pregnancy causing deformity in children—Some 400 thalidomide children in England—Claims in respect of 62 children brought within limitation period previously settled—Company under that settlement paying average of £15,000 in respect of each child—260 parents subsequently given leave to apply to extend limitation period—Negotiations for settlement—Company offering to set up trust fund for benefit of children who had not benefited from earlier settlement—Trustees in applying fund for benefit of children to have 'due and proper regard for the differing needs and resources of and for the differing degrees of handicap or disability of individual beneficiaries'—Condition of proposed settlement that should be accepted by all parents—Five parents refusing—Whether refusal reasonable in circumstances. **Re Taylor's Application** [1972] 2 873, CA.

Orphan—

Religious upbringing. *See* **Custody**—Orphan—Religious upbringing, *ante*.

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- Parents patriae jurisdiction. *See* **Statute** (Crown—Parents patriae jurisdiction).
- Parental rights—
 - Stepfather. *See* **Guardianship**—Application—Minor having no parent, guardian or other person having parental rights, *ante*.
- Paternity. *See* **Paternity**.
- Payment out of court—
 - Money recovered by minors in High Court and transferred to county court. *See* **County court** (Payment out of court—Money recovered by infants etc in High Court and transferred to county court).
- Practice—
 - Chancery Division—
 - Chambers applications relating to minors—Adjournment to judge within stated time. **Practice Direction** [1966] 3 84, ChD.
- Proceeding by next friend—
 - Adoption of action on attaining majority. *See* **Practice** (Persons under disability—Minor—Adoption of action on attaining majority).
- Religious education. *See* **Custody**—Care and control—Religious education, *ante*.
- Removal of proceedings instituted in court of summary jurisdiction to High Court. *See* **Custody**—Jurisdiction—Removal of proceedings to High Court, *ante*.
- Removal outside jurisdiction—
 - Application for order prohibiting or allowing removal of child out of England and Wales—
 - Practice. *See* **Child** (Practice—Matrimonial causes—Application relating to children—Application for order prohibiting removal of child out of England and Wales).
 - Application under **Guardianship of Infants Acts**—
 - Custody and access the subject of an order of Canadian court—**Guardianship of Infants Act** 1886, s 5 (as amended by **Administration of Justice Act** 1928, s 16). **Re E (an infant)** [1955] 3 174, ChD.
 - Custody granted to father by **Divorce Court**—
 - Minors made wards of court in Chancery Division—Application by father to Chancery Division that minors should cease to be wards of court—**Law Reform (Miscellaneous Provisions) Act** 1949, s 9(3). **Re Andrews (Infants)** [1958] 2 308, ChD.
 - Minors made wards of court in Chancery Division—Application by father to **Divorce Division** for leave to take minors out of jurisdiction—**Law Reform (Miscellaneous Provisions) Act** 1949, s 9(2)—**Matrimonial Causes Act** 1950, s 26(1)—**R S C Ord** 54P, r 3. **Andrews v Andrews and Sullivan** [1958] 2 305, Div.
- Magistrates' order—
 - Order forbidding removal—Order a nullity. **T v T** [1968] 3 321, Div.
- Order of court prohibiting removal—
 - Risk of unauthorised removal—Home Office assistance to prevent such removal—
 - Circumstances in which application for assistance to be made—Form of application—**Matrimonial Causes Rules** 1971 (S I 1971 No 1953), r 94(1) (as amended by the **Matrimonial Causes (Amendment) Rules** 1973 (S I 1973 No 777), s 4). **Practice Direction** [1973] 3 194, FamD.
- Passport—
 - Notice to Passport Office—Home Office assistance to prevent unauthorised removal of infant. **Practice Note** [1963] 3 66, ChD.
- Revocation of custody order. *See* **Custody**—Order—Revocation of order in wife's favour, *ante*.
- Sentence. *See* **Sentence** (Young person).
- Settlement—
 - Accumulation of income during minority—
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- Settlement of action—
 - Approval of court for. *See* **Practice** (Compromise of action—Approval of court—Approval on behalf of infant).
- Statutory jurisdiction under **Summary Jurisdiction Acts**. *See* **Maintenance**—Statutory jurisdiction, *ante*.
- Stepfather—
 - Parental rights— *See* **Guardianship**—Application—Minor having no parent, guardian or other person having parental rights, *ante*.
- Torts—
 - Tort founded on contract—
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- Training—
 - Child over 16. *See* **Maintenance**—Education or training, *ante*.
- Trust—
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 - Variation of trusts by the court. *See* **Variation of trusts** (Benefit—Infant beneficially interested).
- Variation of maintenance order. *See* **Maintenance**—Variation of order, *ante*.
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- Ward of court. *See* **Ward of court**.
- Welfare of minor—
 - Adoption proceedings. *See* **Adoption** (Welfare of infant).
- Welfare of minor as first and paramount consideration. *See* **Custody**—Welfare of minor as first and paramount consideration, *ante*.
- Wilful neglect to maintain—
 - Amount of maintenance to be ordered—
 - National assistance—Whether national assistance taken into account. **Ashley v Ashley** [1965] 3 554, Div.

MINOR (cont)

Wilful neglect to maintain (cont)—

Amount of maintenance to be ordered (cont)—

Order against husband—Liability of person other than party to marriage to maintain child—Husband not father of child—Liability of natural father—Liability of father not exceeding amount which would be awarded against him under maintenance order—Matrimonial Proceedings (Magistrates' Courts) Act 1960, s 2(1)(h)(5). **Snow v Snow** [1971] 3 833, CA.

Child's maintenance and wife's maintenance separate subjects of complaint—

Whether husband's reasonable belief in wife's adultery a defence to her application for maintenance for child—Summary Jurisdiction (Married Women) Act 1895, s 4. **Cooke v Cooke** [1960] 3 39, Div.

Consensual separation—

Court's power to found on that neglect an order for provision for the wife, in addition to maintenance for the child—Provision such as to enable wife to discharge obligations to child impairing her earning power—Matrimonial Proceedings (Magistrates' Courts) Act 1960, s 2(1)(b)(h). **Northrop v Northrop** [1967] 2 961, CA.

No agreement as to maintenance—Liability of husband. **Starkie v Starkie (No 2)** [1953] 2 1519, Div.

Desertion—

Wife in state of desertion—Jurisdiction to make orders for custody and maintenance of child—Matrimonial Proceedings (Magistrates' Courts) Act 1960, ss 1(1)(h), 2(1)(d)(h), 4(1). **Vaughan v Vaughan** [1963] 2 742, Div.

Wife in state of desertion—Right to claim maintenance suspended—Summary Jurisdiction (Married Women) Act 1895, s 4. **Naylor v Naylor** [1961] 2 129, Div.

Order in favour of wife—

Validity. **Kinnane v Kinnane** [1953] 2 1144, Div.

Wife's maintenance—

Failure to maintain child—Whether wife disentitled to maintenance for herself by reason of husband's failure to maintain child—Matrimonial Proceedings (Magistrates' Courts) Act 1960, ss 1(1)(h), 2(1)(b)(h). **Young v Young** [1962] 3 120, Div.

Youthful offender—

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Continuing representation—

True representation when made but subsequently becoming untrue—

Rescission. **With v O'Flanagan** [1936] 1 727, CA.

Credit. *See* **Misrepresentation as to person's credit, post**.

Distinction from condition and warranty—

Construction—

Effect. **Oscar Chess Ltd v Williams** [1957] 1 325, CA.

MISREPRESENTATION (cont)

Exclusion of liability for misrepresentation—

Avoidance of provision excluding liability—

Liability for misrepresentation by agent—Condition excluding authority of agent to make representation on behalf of principal—Misrepresentation by agent—Whether condition limiting authority of agent liable to be avoided—Whether principal liable for misrepresentation by agent—Misrepresentation Act 1967, s 3. **Overbrooke Estates Ltd v Glencombe Properties Ltd** [1974] 3 511, ChD.

Fraudulent misrepresentation—

Agent—

Liability of principal for misrepresentation of agent—Misrepresentation by agent made before appointment and continuing thereafter—Ratification. **Briess v Woolley** [1954] 1 909, HL.

Belief in truth of representation as understood by representor—

Circular letter inducing purchase of shares. **Akerhielm v De Mare** [1959] 3 485, PC.

Letters read together amounting to representation which writer knew to be untrue—Such representation unintentional—Liability of writer. **Gross v Lewis Hillman Ltd** [1969] 3 1476, CA.

Builders' brochure—

Builders having pool agreement with building society—Whether co-adventurers—Liability of society. **Bradford Third Equitable Benefit Building Society v Borders** [1941] 2 205, HL.

Company prospectus. *See* **Company** (Prospectus—Misrepresentation—Fraud).

Damages—

Generally. *See* **Damages** (Measure of damages—Fraud).

Mitigation of loss. *See* **Damages** (Mitigation of loss—Plaintiff not required to expend money—Plaintiff induced by fraudulent misrepresentation to advance money on debenture).

Dimensions of garden—

Rescission—National Conditions of Sale, cl 10—Costs. **Bellotti v Chequers Developments Ltd** [1936] 1 89, KBD.

Loss of protected tenancy—

Action—Whether loss sufficient to support action. **Mafo v Adams** [1969] 3 1404, CA.

Sale of goods—

Financing agreement—Misrepresentation of price by seller—Sale of used car represented as new car—Fraud. **United Motor Finance Co v Addison & Co Ltd** [1937] 1 425, PC.

Sale of shares—

Shares pledged to bank—Bank charge redeemed since sale—Rescission—Restitutio in integrum—One party released from obligations which cannot be restored. **Spence v Crawford** [1939] 3 271, HL.

Standard of proof—

Balance of probabilities. **Hornal v Neuberger Products Ltd** [1956] 3 970, CA.

Undisclosed principal. *See* **Agent** (Contract—Undisclosed principal—Fraud of principal).

Innocent misrepresentation—

Agent—

Liability of principal for misrepresentation of agent—Knowledge of true facts by principal—No fraud on part of principal. **Armstrong v Strain** [1952] 1 139, CA.

Contract to buy shares in partnership from one partner—

Rescission—Restitutio in integrum—Whether acting as partner made contract an executed contract—Claim for rescission timely and fair. **Senanayake v Cheng** [1965] 3 296, PC.

Fitness of premises. *See* **Landlord and tenant** (Fitness of premises—Innocent misrepresentation inducing contact).

Misrepresentation as to condition of motor lorry—

Acceptance of delivery—Buyer's claim to rescind contract within week of delivery. **Long v Lloyd** [1958] 2 402, CA.

Misrepresentation as to extent of exception clause. *See* **Contract** (Exception clause—Innocent misrepresentation as to extent of clause).

Reasonable ground for belief—

Sale of reversion in trust fund set aside to pay an annuity—Statement, in particulars of sale, that annuitant was believed to have no aggregable estate—No reasonable ground for belief—Rescission of contract. **Brown v Raphael** [1958] 2 79, CA.

Sale of goods—

Misrepresentation as to quality of article sold—Rescission of contract—Acceptance by buyer of delivery—Claim to rescind contract after five years. **Leaf v International Galleries** [1950] 1 693, CA.

Motor cycle—Wrong entry in registration book—Effect. **Routledge v McKay** [1954] 1 855, CA.

Warranty as to car—When misrepresentation gives rise to warranty. **Dick Bentley Productions Ltd v Harold Smith (Motors) Ltd** [1965] 2 65, CA.

Sale of land—

Innocent misrepresentation as to size of site—Contract incorporating Law Society's Conditions of Sale, 1953, condition 35—Area of property substantially smaller than that stated in particulars of sale—Purchaser prejudiced by reason of difference—Contract rescinded. **Watson v Burton** [1956] 3 929, ChD.

Statement of rents—Representation or warranty—Remedy—Reduction in purchase price. **Gilchester Properties Ltd v Gomm** [1948] 1 493, ChD.

Insurance—

Motor insurance—

Policy obtained by misrepresentation of material fact. *See* **Motor insurance** (Rights of third parties against insurers—Duty of insurers to satisfy judgments against insured persons—Insurers not liable where policy obtained by non-disclosure or misrepresentation of material fact).

MISREPRESENTATION (cont)

Misrepresentation as to person's credit—

Negligence—

Oral representation—Whether defence of absence of writing maintainable under Statute of Frauds Amendment Act 1828, s 6. *W B Anderson & Sons Ltd v Rhodes (Liverpool) Ltd* [1967] 2 850, Assizes.

Protected tenancy—

Loss through fraudulent misrepresentation. *See* Fraudulent misrepresentation—Loss of protected tenancy, *ante*.

Quantity, as to. *See* **Weights and measures** (Misrepresentation as to quantity).

Sale of goods—

Fraudulent misrepresentation. *See* Fraudulent misrepresentation—Sale of goods, *ante*.

Innocent misrepresentation. *See* Innocent misrepresentation—Sale of goods, *ante*.

Warranty distinguished. *See* Distinction from condition and warranty, *ante*.

Sale of land—

Damages.

See Sale of land (**Damages for breach of contract—Misrepresentation**).

Fraudulent misrepresentation. *See* Fraudulent misrepresentation—Dimensions of garden, *ante*.

Generally. *See* Sale of land (Misrepresentation).

Innocent misrepresentation. *See* Innocent misrepresentation—Sale of land, *ante*.

Rescission of contract. *See* Sale of land (Rescission of contract—Misrepresentation).

Standard of proof—

Fraudulent misrepresentation. *See* Fraudulent misrepresentation—Standard of proof, *ante*.

Supplementary benefit. *See* **Supplementary benefit** (Overpayment—Recovery—Misrepresentation or non-disclosure).

Warranty distinguished from. *See* Distinction from condition and warranty, *ante*.

MISTAKE

Action for relief from consequences of mistake—

Postponement of limitation period. *See* Limitation of action (Postponement of limitation period—Action for relief from consequences of mistake).

Agreement to compromise—

Mistake as to validity of claim—

Agreement to compromise insurance claim—Mistake that insurance policy on which claim based valid—Whether agreement to compromise void for mistake—Whether voidable in equity. *Magee v Pennine Insurance Co Ltd* [1969] 2 819, CA.

Articles of association—

Rectification of mistake—

Jurisdiction of court. *See* Company (Articles of association—Mistake—Rectification of mistake—Jurisdiction of court).

Bank—

Dishonour of cheque. *See* Bank (Cheque—Dishonour—Mistake).

Common mistake. *See* Contract (Mistake—Common mistake).

See Mistake of fact—Common mistake, *post*.

Contract—

Identity of party. *See* Contract (Mistake—Identity of party).

Criminal charge—

Mistake as a defence. *See* Criminal law (Mistake as a defence).

Defence—

Trade description. *See* Trade description (Defence to proceedings—Mistake).

Driving while disqualified. *See* Road traffic (Driving while disqualified for holding licence—Mens rea—Mistake).

Fire insurance—

Payment of loss. *See* Insurance (Fire insurance—Payment of loss—Mistake).

Identity of party—

Contract. *See* Contract (Mistake—Identity of party).

Lease. *See* Landlord and tenant (Lease—Avoidance—Mistake as to identity of party).

Income tax—

Additional assessment. *See* Income tax (Additional assessment).

Relief—

Case stated.

Lease—

Identity of lessee—

Avoidance. *See* Landlord and tenant (Lease—Avoidance—Mistake as to identity of lessee).

Marriage ceremony—

Nature of ceremony. *See* Nullity (Mistake as to nature of ceremony).

MISTAKE (cont)

Mistake of fact—

Alteration of dwelling-house—

New dwelling—Mistake whether a dwelling-house had been so substantially altered as to become a new and separate dwelling under the Rent Restrictions Acts—*Estoppel. Solle v Butcher* [1949] 2 1107, CA.

Common mistake—

Sale of freehold property for £850 subject to existing tenancy—Mistake as to existence of statutory tenancy—Vendor believed property to be in occupation of statutory tenant—Market value of property with vacant possession would have been approximately £2,250—Original tenant might be wife or husband, but both of them had died—Their son was in occupation but did not claim protection under Rents Acts—Whether vendor entitled to rescission of agreement. *Grist v Bailey* [1966] 2 875, ChD.

Money paid under mistake of fact—

Contract—Modification of terms of payment—Payment upon old terms—Account passed by agent ignorant of new terms—Mistake of principal—Effect of knowledge of another agent. *Anglo-Scottish Beef Sugar Corp Ltd v Spalding Urban District Council* [1937] 3 335, KBD.

First mortgagee selling mortgaged property and remitting incorrect balance to second mortgagee—Mistake in calculation of interest—Mistake inter partes—*Estoppel. Weld Blundell v Synott* [1940] 2 580, KBD.

Long lease—Rent paid without deduction of tax at standard rate—Recovery of overpayments—Income Tax Act 1918, General Rules Applicable to All Schedules, r 19(2)—Finance Act 1940, s 17(1)(a)(2). *Turvey v Dentons (1923) Ltd* [1952] 2 1025, QBD.

Overpayment of betting winnings—Recovery. *Morgan v Ashcroft* [1937] 3 92, CA.

Resolution of local authority to make up to employees difference between war service pay and civilian pay—Right of authority to recover overpayments. *Larner v London County Council* [1949] 1 964, CA.

Totalisator bet—Winnings paid partly in five-pound notes in mistake for one-pound notes—Whether excess recoverable—Racecourse Betting Act 1928, ss 2(8), 3(3), 4. *Racecourse Betting Control Board v Mount* [1938] 3 547, CA.

Mistake of law—

Law subsequently changed by decision of House of Lords—

Money paid into court taken out in satisfaction—Right to removal of stay of action. *Derrick v Williams* [1939] 2 559, CA.

Money paid under mistake—

Money paid to charitable institutions by executors under a mistake as to the construction of a will. *See Trust and trustee* (Following trust property—Payment under mistake—Money paid to charitable institutions by executors under a mistake as to the construction of a will).

Money paid under threat of legal proceedings—Law subsequently changed—Whether recoverable—Landlord and Tenant (War Damage) (Amendment) Act 1941, s 13. *Sawyer v Windsor Brace Ltd* [1942] 2 669, KBD.

Payment to Commissioners of Customs and Excise for purchase tax while liability to tax sub judice. *Sebel Products Ltd v Comrs of Customs and Excise* [1949] 1 729, ChD.

Recovery—Claim in equity—Residue of testator's estate paid to charitable institutions by executors—Directions in will void for uncertainty—Rights of those entitled under intestacy to recover from institutions sums paid. *Ministry of Health v Simpson* [1950] 2 1137, HL.

Recovery—Parties not in pari delicto. *Kiriri Cotton Co Ltd v Dewani* [1960] 1 177, PC.

Mistaken belief—

Belief action statute-barred—

Whether mistake as to material fact. *See Limitation of action* (Extension of time limit—Material fact outside knowledge of plaintiff—Mistaken belief that claim statute-barred).

Mutual mistake—

Mutual mistake as to freehold title—

Tenancy including also other lands—Whether tenancy void as regards land affected by mutual mistake. *Bligh v Martin* [1968] 1 1157, ChD.

Nature of agreement—

Non est factum. *See Document* (Non est factum).

Nature of document—

Non est factum—

Burden of proof—Proof that reasonable care exercised—Failure to exercise reasonable care not giving rise to estoppel. *Saunders v Anglia Building Society* [1970] 3 961, HL.

Fundamental difference—Mistake as to personality. *Saunders v Anglia Building Society* [1970] 3 961, HL.

Hire-purchase transaction—Documents signed by car-owner in blank in belief that they were to procure her a loan on the security of her car—Non est factum—Defence not established—No sufficient misrepresentation as result sought by car-owner would have been attained. *Mercantile Credit Co Ltd v Hamblin* [1964] 3 592, CA.

Hire-purchase transaction—Indemnity form signed by hirer in respect of hire-purchase agreement of car in belief that it was release of his rights as hire-purchaser of same car under another hire-purchase agreement—Non est factum. *Muskham Finance Ltd v Howard* [1963] 1 81, CA.

To whom plea available. *Saunders v Anglia Building Society* [1970] 3 961, HL.

Notice to quit—

Validity of notice. *See Landlord and tenant* (Validity of notice to quit—Error or mistake).

Payment out of court—

Jurisdiction of county court to order money to be repaid into court. *See County court* (Jurisdiction—Order for repayment of money paid out of court in error).

MISTAKE (cont)

Payment subject to deduction of tax—

Receipt in full settlement—

Inland Revenue decision that no tax payable—Re-opening accounts. **Bullingdon Rural District Council v Oxford Corpn** [1936] 3 875, KBD.

Price of subject-matter of transaction—

Goods offered at certain prices per pound instead of per piece—

Offeree's knowledge of mistake—Whether acceptance of such offer binding contract. **Hartog v Colin and Shields** [1939] 3 566, KBD.

Recovery of money paid—

Income tax—

Insufficient deduction of tax. *See* **Income tax** (Annual payment—Deduction of tax—

Insufficient deduction—Recovery of money overpaid).

Rectification—

Agreement containing arbitration clause—

Parties proceeding to arbitration and award made—Claim for rectification of agreement in action to enforce award—Estoppel. **Crane v Hegeman-Harris Co Inc** [1939] 4 68, CA.

Antecedent expressed accord on particular point before written contract. *See* **Contract** (Rectification—Written contract—Antecedent expressed accord on particular point).

Covenant to pay sum free of tax—

Words used ineffectual to secure result. **Jervis v Howle** [1936] 3 193, ChD.

Deed. *See* **Deed** (Rectification).

Evidence of mistake—

Annuity granted without sufficient reference to deduction of tax—Grantor paying annuity in full for 30 years. **Fredensen v Rothschild** [1941] 1 430, ChD.

Land register—

Rectification affecting title of proprietor in possession. *See* **Land registration** (Rectification of register—Rectification affecting title of proprietor in possession—Proprietor contributing to mistake in registration).

Sale of goods—

Written contract correctly stating terms agreed orally—Mutual error as to meaning of expression used. **Frederick E Rose (London) Ltd v Wm H Pim Junr & Co Ltd** [1953] 2 739, CA.

Unilateral mistake—

Estoppel—Building contract—Time for completion of building specified in plaintiff's tender as eighteen months—Contract drawn up by defendants specifying thirty-month period for completion—Plaintiff executed contract believing that eighteen-month period for completion specified therein—Defendants knowing of plaintiff's mistake did nothing to correct it—Whether plaintiff entitled to rectification. **A Roberts & Co Ltd v Leicestershire County Council** [1961] 2 545, ChD.

Unilateral mistake—

Lease—Mistake of lessor in drafting lease—Lessee unaware of mistake—Mistake not attributable to anything said or done by lessee—Claim by lessor for rescission subject to rectification at lessee's option—Whether mere unilateral mistake ground for rescission. **Riverlate Properties Ltd v Paul** [1974] 2 656, CA.

Royalties—

Deduction of tax—

Accord and satisfaction. *See* **Accord and satisfaction** (Royalties—Deduction of tax—Acceptance of deduction under mistake of law).

Valuation—

Contractual purchase price. *See* **Valuer** (Valuation—Mistake).

Purchase price determined by valuer. *See* **Valuer** (Valuation—Mistake—Validity—Contractual purchase price).

Weights and measures—

Defence to proceedings. *See* **Weights and measures** (Defence to proceedings—Mistake, accident or some other cause beyond defendant's control).

MISTRESS

Joint acquisition of house with man—

Resulting trust. *See* **Trust and trustee** (Constructive trust—Unmarried couple—House acquired by joint efforts for joint benefit).

Joint acquisition of property with man—

Resulting trust. *See* **Trust and trustee** (Constructive trust—Unmarried couple—Transfer of property acquired by both into name of one party).

Licence to occupy house owned by man. *See* **Licence** (Licence to occupy land—Contractual licence—Unmarried couple).

Property acquired by joint contributions. *See* **Trust and trustee** (Constructive trust—Unmarried couple).

See **Trust and trustee** (Unmarried couple—Contributions to acquisition of property).

MISUSE OF POWER

Public authority. *See* **Public authority** (Statutory powers—Misuse of power).

MITIGATION

Contempt of court. *See* **Contempt of court** (Mitigation).

Damages—

Breach of contract. *See* **Contract** (Damages for breach—Mitigation of loss).

Generally. *See* **Damages** (Mitigation of loss).

Sentence—

Criminal trial. *See* **Sentence** (Factors in assessing sentence—Mitigation).

MIXED SHOP

Hours of closing. *See* **Shop** (Hours of closing—Early closing day—Mixed shop).

MOBILE VAN

Equipped as shop—

Sunday trading. *See* **Shop** (Sunday closing—Retail trading elsewhere than in shop—Mobile van equipped as shop).

MOLESTATION

Injunction. *See* **Injunction** (Husband and wife—Molestation).

MONEY

Award—

Arbitration. *See* **Arbitration** (Award).

Borrowing—

Treasury control—

Issue of shares and debenture stock in consideration of sale of land—Whether transaction 'borrowing of money' within Borrowing (Control and Guarantees) Act 1946, s 4(2)(a)—Control of Borrowing Order 1947 (S R & O 1947 No 945), art 2(1). **London & Country Commercial Property Investments Ltd v Attorney-General** [1953] 1 436, ChD.

Currency—

Alteration of currency—

Annuity payable under will and family arrangement—Sum expressed in marks—Assessment of amount to be paid after alteration of German currency—Whether exercise of discretion of court. **Kornatzki v Oppenheimer** [1937] 4 133, ChD.

Appraisal and sale of ship by Admiralty marshal. *See* **Admiralty** (Appraisal and sale—Currency of sale).

Currency in which debt payable—

Bond issued by British Government in America—Law applicable—Gold clause—American legislation—Effect of option to pay in England. **R v International Trustee for the Protection of Bondholders Akt** [1937] 2 164, HL.

Contract governed by Turkish law—Pension based on salary—Whether payable on a gold basis—Unconditional receipts for 'net amount payable'—Release. **Ottoman Bank, Haifa v Clement Menhit** [1939] 4 9, PC.

Contract of service made in England to be performed in New Zealand—Payment in sterling—Whether English or New Zealand currency. **De Bueger v J Ballantyne & Co Ltd** [1938] 1 701, PC.

Contract with Turkish corporation—Pension based on salary—Whether payable on a gold basis. **Ottoman Bank of Nicosia v Chakarian** [1937] 4 570, PC.

Covenant to pay on gold basis—Redemption of debenture—Payment of interest—Construction of bond—Construction of provisions for payment of interest. **New Brunswick Ry Co v British and French Trust Corp Ltd** [1938] 4 747, HL.

Debenture bond and coupons payable at the option of the holder in London or Auckland—Local Bodies Loans Act 1913, (NZ). **Auckland City Council v Alliance Assurance Co Ltd** [1937] 1 645, PC.

Lease—Governed by Chilean law—Proof of law of country where decisions not binding precedents—Rent reserved in pesos of a certain weight in gold—'Remit'. **St Pierre v South American Stores (Gath & Chaves) Ltd and Chilean Stores (Gath & Chaves) Ltd** [1937] 3 349, CA.

Loan in French liras—Payment of interest on gold basis—Palestinian law. **Apostolic Throne of St Jacob v 'Saba Eff Said** [1940] 1 54, PC.

Currency in which government stock repayable—

New Zealand inscribed stock—Principal and interest repayable at Melbourne free of exchange—Whether payable in Australian currency or New Zealand currency. **National Mutual Life Assn of Australasia Ltd v Attorney-General for New Zealand** [1956] 1 721, PC.

Currency in which debt payable—

Rent—Payment to be either in gold sterling or Bank of England notes to the equivalent value in gold sterling of a specified sum—'Gold sterling'—'Value'. **Treseder-Griffin v Co-operative Insurance Society Ltd** [1956] 2 33, CA.

Repayment of loan—Loan in Gibraltar in pesetas—Subsequent restriction by Spanish government on export of currency. **Pymont Ltd v Schott** [1938] 4 713, PC.

Currency to which amount referable—

Appeal as of right to Privy Council dependant on amount of the matter in dispute—Whether '£500 sterling' referred to Australian pounds. **Skelton v Jones** [1962] 3 85, PC.

Date at which rate of exchange calculated—

Damages for breach of contract—Foreign judgment sued on in the United Kingdom—Rate at date of judgment. **East India Trading Co Inc v Carmel Exporters and Importers Ltd** [1952] 1 1053, QBD.

Liquidated demand—Debt in marks payable in Germany—Whether action in debt or for breach of contract—Rate of exchange prevailing when payment should have been made. **Graumann v Treitel** [1940] 2 188, KBD.

Liquidated sum—Balance of current account with English branch of foreign bank—Bank dissolved abroad. **Re Russian Commercial and Industrial Bank** [1955] 1 75, ChD.

Trust—Rentals due to trustee under American lease of railway rolling stock in Cuba—Sums due from trustee to cestui que trust for service of equipment trust certificate—Trustee's expenses—Default in payment of rentals—Liquidation of railway company in England—At what dates rents payable to trustee and sum due to beneficiaries should be converted into English currency for purposes of proof in liquidation. **Re United Railways of the Havana and Regla Warehouses Ltd** [1960] 2 332, HL.

Debenture bonds and coupons—

Payable at option of the holder in London or New Zealand—Currency in which payable. *See* **New Zealand** (Currency—Debenture bonds and coupons—Payable at the option of the holder in London or New Zealand).

Decimal currency—

Change to. *See* **Decimalisation**.

MONEY (cont)

Currency (cont)—

Foreign currency—

Award of arbitrator—Validity of award for payment expressed in foreign currency. *See Arbitration* (Award—payment of sum of money—Foreign currency).

Palestine. *See Palestine* (Money—Currency).

Rate of exchange—

Damages—Contract or tort. *Re United Railways of the Havana and Regla Warehouses Ltd* [1960] 2 332, HL.

Debt due in foreign country—Payment into court in England—Distinction between payment in foreign country and payment into court in this country. *Madeleine Vionnet et Cie v Wills* [1939] 4 136, CA.

Promissory notes payable in Turkish gold pounds—Paid in Palestinian currency—Date for calculating exchange—Binding effect of decisions of Supreme Court of Palestine—Palestine Order in Council 1922, art 46. *Syndic in Bankruptcy of Nasrallah Khoury v Khayat* [1943] 2 406, PC.

Rate applicable—Loan in Gibraltar in pesetas—Repayment. *Marrache v Ashton, Same v Onos* [1943] 1 276, PC.

Redemption of bonds—Floating currencies—Bonds redeemable at rate of exchange 'determined by the par values of the currencies concerned in force on the appropriate date as agreed with the International Monetary Fund'—Payment in United States dollars of nominal amount of bonds to be reconverted into sterling at appropriate rate of exchange—Dollar and sterling floating currencies on appropriate date and not confined within parity margins—International Monetary Fund not notified of new rates of exchange—Whether previous rates of exchange notified to fund 'in force on the appropriate date'. *Lively Ltd v City of Munich* [1976] 3 851, QBD.

Currency control. *See Currency control*.

Decimalisation. *See Decimalisation*.

Divorce—

Financial provision. *See Divorce* (Financial provision).

Exchange control. *See Currency control*.

Following trust money—

Generally. *See Trust and trustee* (Following trust property).

Mixing trust money with trustee's own money. *See Trust and trustee* (Breach of trust—Mixing trust moneys with trustee's own money).

Foreign exchange control. *See Currency control* (Exchange control—Foreign exchange control).

Forged bank note—

Possession—

Sentence. *See Sentence* (Imprisonment—Length of sentence—Forgery).

Inducement to invest money—

Criminal liability. *See Criminal law* (Inducement to invest money).

Interest of money—

Income tax—

Persons chargeable—Receipt of interest. *See Income tax* (Persons chargeable—Receipt of income—Person receiving income chargeable—Interest of money).

Investment—

Charity—

Chartered corporation—Power to invest. *See Charity* (Chartered corporation—Investments).

Judgment—

Foreign currency. *See Judgment* (Payment of sum of money—Foreign currency).

Loan—

Burden of proof—

Receipt of money admitted by defendant—Allegation by defendant that money a gift, alternatively that it was not repayable when the action was brought—No presumption of advancement arising—Whether burden of proof lay on defendant. *Seldon v Davidson* [1968] 2 755, CA.

Nature of transaction—

Bills purchased at discount—Post-dated cheques given as collateral security—Purchaser not a bank or discount house—Whether contract for repayment of money lent—Whether moneylending transaction. *Chow Young Hong v Choong Fah Rubber Manufactory* [1961] 3 1163, PC.

Power to borrow—

Parochial church council. *See Ecclesiastical law* (Parochial church council—Conduct of financial affairs of church—Borrowing powers).

Mistake—

Money paid under mistake of fact. *See Mistake* (Mistake of fact—Money paid under mistake of fact).

Money paid under mistake of law. *See Mistake* (Mistake of law—Money paid under mistake).

Money had and received—

Cause of action—

Tort—Whether cause of action in tort—Law Reform (Miscellaneous Provisions) Act 1934, s 1(3) as amended by Law Reform (Limitation of Actions &c) Act 1954, s 4. *Chesworth v Farrar* [1966] 2 107, QBD.

Creditor instructing debtor to pay third person out of fund—

Acceptance of instructions by debtor—Action by third person against debtor—What constitutes a sufficient fund to enable the action to lie—Whether consideration moving from the third person to the creditor is necessary. *Shamia v Joory* [1958] 1 111, QBD.

Failure of consideration—

Company—Invalid issue of shares—Transfer by shareholder to transferees—Subsequent claim against company for repayment of price of shares. *Linz v Electric Wire Co of Palestine Ltd* [1948] 1 604, PC.

MONEY (cont)

Money had and received (cont)—

Origin of cause of action—

Money paid under mistake of law recoverable when parties not in *pari delicto*—Money paid for illegal premium. **Kiriri Cotton Co Ltd v Dewani** [1960] 1 177, PC.

Recovery—

Cheques obtained by fraud and paid into wife's account—No privity of contract between wife and plaintiff—Wife agent of husband—Money paid out by wife without notice of fraud and under instructions of husband—Whether contract to repay money to be implied. **Transvaal and Delagoa Bay Investment Co Ltd v Atkinson** [1944] 1 579, KBD.

Money paid—

Nature of claim—

Distinction between claim for money paid and claim for money lent. **Re H P C Productions Ltd** [1962] 1 37, ChD.

Moneylender. *See* **Moneylender**.

Promissory note—

Implied request to third party to discharge promisor's liability—

Payment made by third party—Note not enforceable. **Re Chetwynd's Estate** [1937] 3 530, CA.

Rate of exchange. *See* **Currency**—Rate of exchange—Promissory notes payable in Turkish gold pounds, *ante*.

Rate of exchange—

Currency— *See* **Currency**—

Date at which rate calculated. *See* **Date at which rate of exchange calculated, ante**.

Receipt—

Evidence of receipt—

Purchase money from sale of registered land—Entry on proprietorship register. *See* **Land registration** (Transfer —Purchase price remaining unpaid—Deed of transfer containing acknowledgment of receipt of purchase price).

Receiving stolen money. *See* **Criminal law** (Receiving stolen property—Money).

Smuggling of—

Prohibition on export of money. *See* **Currency control** (Exchange control—Prohibition of export of money—Smuggling money, Bank of England notes, out of country).

Will—

Gift—

Construction. *See* **Will** (Gift—Specific bequests—'Any money I may leave').

MONEY JUDGMENT

Execution and enforcement—

Garnishee order. *See* **Execution** (Garnishee order).

MONEYLENDER

Discovery—

Securities alleged void on ground that lenders were moneylenders and that acts were not complied with—

Transactions after loan—Whether disclosure should be ordered of transactions after as well as before the loan in question. **Marshall v Goulston Discount (Northern) Ltd** [1966] 3 994, CA.

Document issued by moneylender for purpose of his business—

Document which implies that moneylender carries on banking business—

Moneylender described as 'Merchant Bankers' on cheque issued by him—Cheque drawn by moneylender in part payment of loan—Whether loan unenforceable by moneylender—Whether civil remedy available to borrower in addition to criminal penalties—Moneylenders Act 1927, s 4(3). **London and Harrogate Securities Ltd v Pitts** [1976] 3 809, CA.

Exception from definition of moneylender—

Person bona fide carrying on business not having for its primary object lending of money—

Belief that refraining from making loans to customers would lose custom—Materiality of belief—Immateriality of correctness of belief in fact. **Official Assignee of the Property of Koh Hor Khoon, Bankrupt v Ek Liong Hin Ltd** [1960] 1 440, PC.

Hire-purchase finance company—Discounting notes issued against hire-purchase agreement—Whether moneylending transaction—Companies Act 1929, s 266. **Transport and General Credit Corp Ltd v Morgan** [1939] 2 17, ChD.

Hire-purchase finance company—Loans to motor dealers—No direct connexion with hire-purchase transactions—Whether finance company within exception—Whether loans recoverable—Money-lenders Act 1900, s 6(d). **Premor Ltd v Shaw Brothers** [1964] 2 583, CA.

Hire-purchase finance company—Sale of book debts—Whether moneylending transaction—Whether unenforceable as made by unlicensed moneylender—Moneylenders Act 1927, s 1. **Olds Discount Co Ltd v John Playfair Ltd** [1938] 3 275, KBD.

Issuing house—Joint loans by issuing house and others—Whether unenforceable as made by unlicensed moneylender—Moneylenders Act 1900, s 6(1)(d). **Frank H Wright (Constructions) Ltd v Frodoor Ltd** [1967] 1 433, QBD.

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Effect of longstanding reputation as banker—Burden of proof—Moneylenders Act 1900, s 6(d). **United Dominions Trust Ltd v Kirkwood** [1966] 1 968, CA.

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Rate—

Forty-five per cent—Personal loan and legal charge on ten-year lease at a rack rent—Whether rate harsh and unconscionable—Moneylenders Act 1900, s 1—Moneylenders Act 1927, s 10(1). **Re 22 Albion Street, Westminster** [1967] 3 943, ChD.

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Licensed moneylender a company having registered office at one place and authorised address at another—Memorandum of contract, and a guarantee, bearing authorised address—Negotiation by telephone—Moneylenders Act 1927, s 1(3)(b). **Re 22 Albion Street, Westminster** [1967] 3 943, ChD.

Loan—

Nature of loans and contracts for loans—

Bills purchased at discount—Post-dated cheques maturing on same day as bills given as collateral security—Purchaser not a bank or discount house—Whether contract for the repayment of money lent—Malayan Moneylenders Ordinance 1951, (No 42 of 1951), ss 15, 16. **Chow Yoong Hong v Choong Fah Rubber Manufactory** [1961] 3 1163, PC.

Unenforceable transaction—

Relief—Terms—Repayment of moneys borrowed—Whether borrower obtaining relief put on terms to repay moneys borrowed. **Kasumu v Baba-Egbe** [1956] 3 266, PC.

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Element of machinery for effecting transaction, not essential term of contract—Loan to be secured on lease—Borrower to pay premium for lease—Part of loan intended to be used, and used, to meet premium—Premium in fact paid, and lease obtained, by lender's solicitor as agent for borrower's solicitor before loan completed—Memorandum not stating that premium to be met out of loan—Whether memorandum complied with Moneylenders Act 1927, s 6(2). **Re 22 Albion Street, Westminster** [1968] 2 960, CA.

Delivery to borrower—

Loan to joint and several borrowers—Copy of memorandum sent to only one borrower—Whether sufficient compliance with statutory requirements—Moneylenders Act 1927, s 6(1). **John W Grahame (English Financiers) Ltd v Ingram** [1955] 2 320, CA.

Interest—

Provision for payment of compound interest—Partial illegality—Legality of loan to discharge partially illegal loan by moneylender. *See* Contract (Illegality—Enforceability of contract—Subsequent transaction—Loan to discharge obligation under illegal contract—Partial illegality—Loan by registered moneylender—Provision in agreement for payment of compound interest).

Rate of interest charged on loan—

Actual rate stated—Installments—Allocation to principal and interest—Interest upon interest—Moneylenders Act 1927, ss 6(2), 7, 15(2). **Mutual Loan Fund Assn v Sanderson** [1937] 1 380, KBD.

Alternative statutory requirements—Actual or notional rate—Total interest, as defined in statute, spread over period of repayment loan in order to compute actual rate stated—Whether compliance with the alternative statutory requirement for statement of an actual rate—Moneylenders Act 1927, ss 6(2), 15(1), Sch 1. **Askine Ltd v Green** [1967] 1 65, CA.

Memorandum required to show interest expressed in terms of a rate per cent per annum—Memorandum providing that interest 'be calculated at the true rate of 23% on the balance'—Omission of words 'per annum'—True meaning of memorandum clear—Whether statutory requirement complied with—Whether memorandum unenforceable—Moneylenders Act 1927, s 6(2). **London and Harrogate Securities Ltd v Pitts** [1976] 3 809, CA.

Necessity to state interest—Moneylenders Act 1927, s 6. **Mason & Wood Ltd v Greene** [1936] 2 509, CA.

Signature by borrower—

Statutory requirement that memorandum to be signed personally by borrower—Personally—Loan to company—Signature to memorandum by company official—Sufficiency of memorandum—Sufficiency of affidavit of proof—Moneylenders Act 1927, ss 6, 9—Companies Act 1929, s 29. **Re British Games Ltd** [1938] 1 230, ChD.

Sufficiency—

Collateral transactions not stated—Moneylenders Act 1927, s 6(2). **Askine Ltd v Green** [1967] 1 65, CA.

Guarantee and bill of sale—Clause that if bill of sale became invalid, guarantors would repay loan and interest—Clause not referred to in memorandum—Moneylenders Act 1927, s 6. **Central Advance and Discount Corp Ltd v Marshall** [1939] 3 695, CA.

Loan made up of previous loans and new loans—Principal and interest payable in lump sum on stated date—No power to charge interest after stated date—Whether sum paid for stamp duties to be included in memorandum—Inclusion of schedule in copy of bill of sale attached to memorandum—Moneylenders Act 1927, s 6. **Allighan v London and Westminster Loan and Discount Co Ltd** [1940] 3 530, KBD.

Loan of purchase price of property mortgaged to secure loan—Mortgage debt—Date of loan not in mortgage deed when signed—Requirements of statute—Moneylenders Act 1927, s 6(1)(2). **Congresbury Motors Ltd v Anglo-Belge Finance Co Ltd** [1969] 3 545, ChD.

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Loan secured by bill of sale—Borrower receiving copy of bill of sale—No reference in memorandum to power of seizure and sale contained in bill of sale—Moneylenders Act 1927, s 6. **Hoare v Adam Smith (London) Ltd** [1938] 4 283, KBD.

Loan secured by bill of sale—Copy of bill of sale attached to memorandum—Whether two documents can be read together—Moneylenders Act 1927, s 6. **Tooke v T W Bennett & Co Ltd** [1939] 4 200, KBD.

Loan secured by bill of sale—No reference in memorandum to power of seizure and sale contained in bill of sale—Moneylenders Act 1927, s 6. **Mitchener v Equitable Investment Co Ltd** [1938] 1 303, KBD.

Loan secured by promissory note—Ambiguity in stating effect of promissory note—Promissory note only consistent with one view of memorandum—Whether sufficient compliance with statutory provisions—Moneylenders Act 1927, s 6. **Mills Conduit Investments Ltd v Tattersall** [1940] 1 281, KBD.

Omission of reference to part of security—Borrower fully aware of terms of contract—Moneylenders Act 1927, s 6. **Kent Trust Ltd v Cohen** [1946] 2 273, CA.

Omitted terms—Reference therein to promissory note which contained the omitted words—Not permissible to look at promissory note unless copy thereof delivered or sent to borrower—Moneylenders Act 1927, s 6(2). **Edgware Trust Ltd v Lawrence** [1961] 3 141, QBD.

Promissory note payable by instalments—Post-dated cheques in respect of instalments—No reference in memorandum to payment by cheque—Moneylenders Act 1927, s 6. **Collings v Charles Bradbury Ltd** [1936] 3 369, ChD.

Statement of one promissory note for £100—Two notes for £50 each actually given—Moneylenders Act 1927, s 6(2). **Re A Debtor (No 18 of 1937)** [1938] 2 759, ChD.

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Loan at high rate of interest—Principal and interest consolidated in new loan at moderate rate of interest—Moneylenders Act 1900, s 1. **B S Lyle Ltd v Pearson and Medlycott** [1941] 3 128, CA.

Security—

Enforcement—

Limitation of time for proceedings—Loan secured by second mortgage—Sale of mortgaged property by first mortgagee—Claim by moneylender of surplus proceeds—Whether claim to enforce 'security taken in respect of a loan'—Law of Property Act 1925, s 105—Moneylenders Act 1927, s 13(1). **Re Martin's Mortgage Trusts** [1951] 1 1053, CA.

Security given by the borrower or by his agent—Security given by third party—Memorandum insufficient—Security given by borrower not enforceable—Security given by third party—Whether 'security given by the borrower'—Whether enforceable—Moneylenders Act 1927, s 6(1). **Barclay v Prospect Mortgages Ltd** [1974] 2 672, ChD.

Security not enforceable—Meaning of 'enforceable'—Mode of enforcement—Deposit of assets by surety with lender as security for loan—Memorandum of loan insufficient—Whether security enforceable by means other than legal proceedings—Whether surety entitled to order for delivery up of assets—Moneylenders Act 1927, s 6(1). **Barclay v Prospect Mortgages Ltd** [1974] 2 672, ChD.

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Unenforceable contract—Right of borrower to return of security for loan—Whether plaintiff put upon terms—Moneylenders Act 1927, ss 5(6), 6. **Cohen v J Lester Ltd** [1938] 4 188, KBD.

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Appointment of receiver by first mortgagee after appointment of receiver by subsequent mortgagee—Date from which account to commence where leave under Courts (Emergency Powers) Act 1939 necessary. **Re Belbridge Property Trust Ltd** [1941] 2 48, ChD.

Mortgagee in possession—

Sum received for principal and interest—Whether mortgagee entitled to deduct amount of tax on interest. **Hollis v Wingfield** [1940] 1 531, CA.

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Action by mortgagee for possession—

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Acknowledgment by mortgagor's solicitor—Limitation Act 1939, ss 4(3), 23(1)(a). **Wright v Pepin** [1954] 2 52, ChD.

Action commenced by writ—

Judgment entered in default of appearance—Irregular procedure—Judgment set aside.

Redditch Benefit Building Society v Roberts [1940] 1 342, CA.

House subject to Rent Restrictions Acts—

Unauthorised lease of mortgaged property—Default in payment of instalments due under mortgage—Position of tenant—Increase of Rent and Mortgage Interest (Restrictions) Act 1920, s 12(1)(g)—Law of Property Act 1925, s 99(1)—Rent and Mortgage Interest Restrictions (Amendment) Act 1933, s 3(1), Sch 1. **Dudley and District Benefit Building Society v Emerson** [1949] 2 252, CA.

Jurisdiction of High Court—

Action by mortgagee for foreclosure or sale—County court having exclusive jurisdiction to hear and determine action in which claim for possession made unless action is an action for foreclosure or sale—Mortgagee in reality seeking payment or possession—Claim for foreclosure or sale added as colourable device—Whether 'an action for foreclosure or sale'—Whether High Court having jurisdiction to hear and determine it—Administration of Justice Act 1970, ss 37, 38. **Trustees of Manchester Unity Life Insurance Collecting Society v Sadler** [1974] 2 410, ChD.

Originating summons—

Service—Joint mortgagors—Service effected on one mortgagor who was in possession—No service on other mortgagor whose whereabouts was unknown—Order for possession made—RSC Ord 55, r 5A. **Alliance Building Society v Yap** [1962] 3 6, ChD.

Service of certain notices—Default of appearance—Notice to proceed after a year's delay—RSC Ord 55, r 5A, Ord 64, r 13, Ord 67, r 4. **Practice Directions** [1958] 2 384, ChD.

Substituted service—Courts (Emergency Powers) Act 1939, s 1(2)(a)(ii)(v). **Temperance Permanent Benefit Building Society v Isles** [1940] 1 75, CA.

Parties—

Action against wife of mortgagor—Mortgagor serving soldier—Judgment in default of appearance—Certificate—RSC Ord 13, r 8, 17, Ord 55, r 5A, B. **Temperance Permanent Benefit Building Society v Nevitt** [1940] 3 237, CA.

Deserted wife in occupation of former matrimonial home—Default by husband in mortgage payments—No notice to wife of proceedings against husband until after judgment—Whether wife entitled to be joined as defendant in action against husband—Whether husband after order for possession entitled to occupy dwelling-house—Matrimonial Homes Act 1967, s 1(5)(8). **Hastings and Thanet Building Society v Goddard** [1970] 3 954, CA.

Deserted wife in occupation of former matrimonial home—Default by husband in mortgage payments—Originating summons for possession by mortgagee against husband alone—Order for delivery of possession—Wife added as defendant—Wife having no independent right against mortgagee—Summons and order not void—Person having independent right against mortgagee entitled to be heard and thus to be added as defendant, but summons against mortgagor alone not void—RSC Ord 55, r 5B. **Brighton & Shoreham Building Society v Hollingdale** [1965] 1 450, ChD.

Mortgagor—Personal representatives of deceased mortgagor not necessary parties if possession would not prejudice mortgagor's estate. **Barclays Bank Ltd v Kiley** [1961] 2 849, ChD.

Mortgagor entitled to possession as registered proprietor—Mortgagor not in actual possession—Action for possession not a proceeding for enforcement of mortgage—Mortgagor not a proper party to action for possession. **Esso Petroleum Co Ltd v Alstonbridge Properties Ltd** [1975] 3 358, ChD.

Mortgagor not in occupation. *See* Possession of mortgaged property—Mortgagor not in occupation, *post*.

Person in possession of the property—Stranger to mortgage—RSC Ord 55, r 5A. **Alliance Building Society v Varma** [1949] 2 261, CA.

Trustee in bankruptcy—RSC Ord 55, rr 5A, 5B. **Martins Bank Ltd v Kavanagh** [1948] 2 448, ChD.

Action on covenant—

Building society—

Mortgagor transferring property and shares in society—No release from covenant. **West Bromwich Building Society v Bullock** [1936] 1 887, KBD.

Agreement for a loan—

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Damages for breach of agreement. **Astor Properties Ltd v Tunbridge Wells Equitable Friendly Society** [1936] 1 531, KBD.

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Leasehold interest—Chargee having same protection as if mortgage by sub-demise—Effect of attornment clause—Assignment of lease—Whether assignee liable on covenants, contained in charge, to take motor fuel supplies from chargee by way of legal mortgage—Tied petrol filling station—Law of Property Act 1925, s 87(1)(b). **Regent Oil Co Ltd v J A Gregory (Hatch End) Ltd** [1965] 3 673, CA.

Tenancy by estoppel—Whether tenancy by estoppel created. **Regent Oil Co Ltd v J A Gregory (Hatch End) Ltd** [1965] 3 673, CA.

Creation of relationship of landlord and tenant—

Application of Rent Restrictions Acts. **Portman Building Society v Young** [1951] 1 191, CA.

Notice to quit—Length of notice required—Whether property let as a dwelling—Rent Act 1957, s 16. **Alliance Building Society v Pinwill** [1958] 2 408, ChD.

Notice to quit—Need of notice—Breach of covenant to repay principal by instalments—Claim by mortgagee to possession. **Hinckley and Country Building Society v Henny** [1953] 1 515, ChD.

Notice to quit—Validity—Application of Agricultural Holdings Acts—Agricultural Holdings Act 1948, ss 2(1), 23(1). **Steinying and Littlehampton Building Society v Wilson** [1951] 2 452, ChD.

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Mortgaged property subject to joint tenancy—

Bankruptcy of one of joint tenants—Right of mortgagee to prove for debt. *See* **Bankruptcy (Proof)—Secured creditor—Joint tenancy of property charged to secure loan.**

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Registered land. *See* **Land registration (Charge).**

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Estate of mortgagee—

Term of years—Whether legal term of years vested in chargee—Law of Property Act 1925, s 87(2). **Weg Motors Ltd v Hales** [1961] 3 181, CA.

Statutory protection, powers and remedies of mortgagee—

Effect as if mortgage by sub-demise—Tied petrol filling station—Covenants in mortgage to take motor fuel from chargee were covenants protecting security—Enforceable against assignee by virtue of Law of Property Act 1925, s 87(1)(b). **Regent Oil Co Ltd v J A Gregory (Hatch End) Ltd** [1965] 3 673, CA.

Charging order of judgment creditor—

Remedy—

Foreclosure—Sale—Judgments Act 1938, s 14. **Daponte v Schubert** 1939] 3 495, ChD.

Clog on equity of redemption—

Option to purchase—

Transfer of mortgage—Option to purchase mortgaged property granted by mortgagor to transferees as part of arrangement for transferees lending a sum slightly larger than the amount secured by the mortgage—Whether option was void as a clog on the equity of redemption. **Lewis v Frank Love Ltd** [1961] 1 446, ChD.

Postponement of redemption—

Principal repayable by instalments over period of 40 years—Company—Loan deemed by mortgage of property—Reasonableness of postponement of redemption—Clog on equity—Rule against perpetuities—Whether mortgage a debenture—Companies Act 1929, ss 74, 380. **Knightsbridge Estates Trust Ltd v Byrne** [1940] 2 401, HL.

Restraint of trade—

Petrol filling station—Solut terms incorporated into mortgage—Mortgage repayable by instalments over twenty-one years—Not redeemable otherwise—Whether doctrine of restraint of trade applied to covenants in mortgage—Whether mortgage oppressive and therefore redeemable on notice. **Esso Petroleum Co Ltd v Harper Garage (Stourport) Ltd** [1967] 1 699, HL.

Collateral advantage—

Premium—

Security for premium and moneys lent—Charge on mortgagor's house on occasion of expiration of lease and his purchase of freehold from landlords—Loan of £2,900 by landlords—Purchase price £3,500—£600 provided by mortgagor—Sum charged by mortgage £4,553, payable by seventy-two equal monthly instalments—Premium (£1,653) included in the sum charged—On default whole of money lent and premium would become due—Mortgagor in default—Mortgagees sought to enforce mortgage—Whether charge should stand as security for premium as well as for moneys lent—Whether interest should be allowed. **Cityland and Property (Holdings) Ltd v Dabrah** [1967] 2 639, ChD.

Costs—

Enforcing security—

Mortgagee's costs—Scale—Costs, charges and expenses properly incurred. **Re Adelphi Hotel (Brighton) Ltd** [1953] 2 498, ChD.

Protecting security—

Mortgagee defending his title—Action by legally-aided person—Costs added to security—Legal Aid and Advice Act 1949, s 2(2). **Saunders v Anglia Building Society (No 2)** [1971] 1 243, HL.

Mortgagee defending his title—Action by poor person—Costs added to security—RSC Ord 16, r 28(1), Ord 65, r 1. **Re Leighton's Conveyance** [1936] 3 1033, CA.

Not recoverable from mortgagor personally as distinct from being allowed as condition of redeeming mortgage—Legally aided mortgagor challenging sale by mortgagee—Whether mortgagor would be declared personally liable for mortgagee's costs if action failed—Legal Aid and Advice Act 1949, s 2(2)(e). **Sinfield v Sweet** [1967] 3 479, ChD.

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Covenant—

Restraint of trade. *See* **Restraint of trade by agreement** (Petrol filling station—Solus agreement—Mortgage).

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Mortgagee retaining debt out of proceeds of mortgaged policy. *See* Repayment—Mortgagee retaining debt out of proceeds of mortgaged property, *post*.

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Demand for repayment—

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Discharge—

By Statutes of Limitation—

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Counterclaim by mortgagor—

Failure of mortgagor to repay loan secured by charge on his property—Writ issued by mortgagee—Counterclaim by mortgagor for unliquidated damages—Counterclaim possibly exceeding amount of debt due—Whether mortgage debt discharged by existence of counterclaim. **Samuel Keller (Holdings) Ltd v Martins Bank Ltd** [1970] 3 950, CA.

Sale of land. *See* **Sale of land** (Title—Discharge of mortgage).

Equitable interest—

Priority—

Agreement for sale of land—Subsequent equitable mortgage of land by vendor company—

Mortgagee's notice of agreement—Failure to register agreement as estate contract until after equitable mortgage—Mortgagee acquiring legal mortgage after registration of agreement—Agreement between vendor company and builder for sale and purchase of property for development—Builder to develop site by building houses building houses thereon—Builder to obtain planning permission—Vendor company to provide finance for building of houses—Finance obtained from mortgagee by means of mortgage on property—Mortgagee's knowledge of agreement for sale—Provision in agreement for builder to give option to complete on giving 14 days' notice—Whether builder obtaining equitable interest under agreement—Whether mortgagee obtaining priority through failure to register agreement prior to equitable mortgage—Whether mortgagee taking precedence over builder's equitable interest by obtaining legal mortgage. **McCarthy & Stone Ltd v Julian S Hodge & Co Ltd** [1971] 2 973, ChD.

Equitable interests ranking in order of time—Law of Property Act 1925, s 113. **Beddoes v Shaw** [1936] 2 1108, ChD.

Husband and wife's joint purchase of matrimonial home—Conveyance in husband's sole name—Creation of three legal charges by husband without wife's knowledge—Whether mortgagee had priority over wife's equitable interest—Constructive notice—Reasonable enquiry—Law of Property Act 1925, s 199(1)(ii). **Counce v Counce** [1969] 1 722, ChD.

Equitable mortgage—

Equitable mortgagee paid off by subsequent lender—

Presumption of intention to keep equitable mortgage alive—Whether presumption negated by taking of an invalid legal mortgage. **Ghana Commercial Bank v Chandiram** [1960] 2 865, PC.

Priority—

Memorandum of deposit and deposit of land certificate—Registered title to land—Notice of deposit (not of the memorandum) entered on register—Charging orders subsequently obtained by judgment creditors and two cautions lodged—Whether charge created by the deposit of the land certificate had priority to judgment creditors' charge—Mortgagees by deposit had power of attorney to convey legal estate—Whether equitable mortgagees by deposit could sell so as to override judgment creditors' charges—Law of Property Act 1925, ss 101, 104(1)—Land Registration Act 1925, s 49—Land Registration Rules 1925 (S R & O 1925 No 1093), r 239. **Re White Rose Cottage** [1965] 1 11, CA.

Unregistered equitable mortgage—Registered lien of contractor—Mortgage not registered while contractor's work done—Subsequent application for registration of mortgage—Delay as result of requisition of district registrar—Registration in respect of first lien action—Caveat registered by mortgagee—Registration in respect of second lien action—Alteration unilaterally by mortgagee of mortgage, expressing it to be subject to liens—Alteration made only for purpose of meeting requisition of district registrar and procuring registration—Whether mortgage as unaltered could be invoked for purposes of obtaining priority over liens—Wages Protection and Contractors' Liens Act 1939 (No 27 of 1939), s 41. **Farrier-Waimak Ltd v Bank of New Zealand** [1964] 3 657, PC.

Equity of redemption—

Limitation of action—

Second mortgagee's estate and right to recover possession statute-barred—Equity of redemption incapable of surviving in gross. **Cotterell v Price** [1960] 3 315, ChD.

Execution—

Sequence of execution of conveyance and mortgage—

Vendor of land leaving part of purchase price on mortgage—Whether vendor's lien excluded or abandoned. **Capital Finance Co Ltd v Stokes** [1968] 3 625, CA.

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Degree of annexation necessary—

Machines attached to driving apparatus attached to realty. **Hulme v Brigham** [1943] 1 204, KBD.

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Foreclosure—

Application for foreclosure nisi—

Affidavit of due execution—No longer required. **Practice Direction** [1969] 2 639, ChD.

Leave to commence proceedings—

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Order for delivery of possession contained in order absolute—

Mortgagee's right to possession without leave of court—Courts (Emergency Powers) Act 1939, s 1(2)(b)—Possession of Mortgaged Land (Emergency Powers) Act 1939. **Wood v Smallpiece** [1942] 1 252, CA.Power to authorise sale of mortgaged property in action for foreclosure. *See* Sale—Power to authorise sale in action for foreclosure, *post*.

Redemption—

Orders nisi—Notice of intention to redeem—Place of redemption. **Practice Directions** [1954] 3 364, ChD, [1955] 1 30, ChD.

Forfeiture of lease—

Rights of mortgagee. *See* Lease—Forfeiture, *post*.

Illegal consideration—

Betting debt secured by deed of charge—

Covenant to repay. **William Hill (Park Lane) Ltd v Hofman** [1950] 1 1013, ChD.

Insurance—

Insurance against war risks—

Breach of covenant—Impossibility of performance—Waiver. **Moorgate Estates Ltd v Trower and Barstow** [1940] 1 195, ChD.

Interest—

Income tax. *See* **Income tax** (Interest—Mortgage interest).Mortgagee's entitlement to arrears of interest. *See* Redemption—Mortgagee's entitlement to arrears of interest, *post*.

Notice by mortgagor to pay off—

Failure to pay on date named—Sum due not set aside and available on date of expiry of notice—Right to interest subsequent to date of expiry. **Barratt v Gough-Thomas** [1951] 2 48, ChD.Restrictions. *See* **Statutory restrictions**—Jurisdiction of High Court. *See* Action by mortgagor for possession—Jurisdiction of High Court, *ante*.

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Breach of repairing covenant—Whether mortgagee entitled to notice of breach—Leasehold Property (Repairs) Act 1938, s 1(2)(3). **Church Comrs for England v Ve-Ri-Best Manufacturing Co Ltd** [1956] 3 777, QBD.Protection of mortgagee—'Underlessee'—Law of Property Act 1925, ss 87(1), 146(1). **Grand Junction Co Ltd v Bates** [1954] 2 385, QBD.

Forfeiture of lease—

Relief of mortgagees. *See* **Landlord and tenant** (Relief against forfeiture—Underlessee—Lease mortgaged—Relief of mortgagees).

Option to purchase freehold reversion—

Option separately assigned to mortgagee—Option exercised by mortgagee—Whether mortgagor entitled to conveyance on redemption. *See* Redemption—Lease with option to purchase freehold reversion, *post*.

Underlease—

Forfeiture of lease—Relief of underlessees. *See* **Landlord and tenant** (Relief against forfeiture—Underletting without consent—Mortgage).

Leasehold—

Assignment by way of mortgage after 1925—

Intended to be security only but not so expressed—Whether assignment operated as subdemise—Law of Property Act 1925, s 86(2). **Grangeside Properties Ltd v Collingwoods Securities Ltd** [1964] 1 143, CA.

Leaseholds mortgaged by subdemise—

No trust of nominal reversion—Equity of redemption statute-barred before 1926—Transitional provisions—Privity of estate between lessor and mortgagee—Law of Property Act 1925, s 89(3), Sch I, Part II, para 3. **St Germans (Earl) v Barker** [1936] 1 849, ChD.

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Mortgaged property subject to contract of sale. *See* **Lien** (Mortgaged property).

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Generally. *See* **Limitation of action** (Mortgage).

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Deserted wife's right to be joined in proceedings against husband by mortgagee. *See* Action by mortgagee for possession—Parties, *ante*.Repayments. *See* **Husband and wife** (Matrimonial home—Mortgage repayments).

Mortgagee in possession—

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Mortgagor not in occupation—

Possession of mortgaged property—*See* Possession of mortgaged property—Mortgagor not in occupation, *post*.Mortgagor's right of possession. *See* Possession of mortgaged property—Mortgagor's right of possession, *post*.

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Notice to mortgagee—

Application for order for transfer of mortgaged property—

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Notice to redeem—

Interest payable after expiry of notice. *See* Interest—Notice by mortgagor to pay off, *ante*.

Option—

Grant of option by mortgagee. *See* Sale—Grant of option by building society mortgagee, *post*.

Purchase—

Clog on equity of redemption. *See* Clog on equity of redemption—Option to purchase, *ante*.

Order for possession of mortgaged property—

Stay of execution of order—

Legal mortgagees obtained order for possession—Mortgagor sought stay of execution—Nothing had occurred since making of order which if it had occurred before order was made would have prevented its being made—Whether court had power to grant stay of execution on an order for possession—RSC Ord 45, r 11. **London Permanent Benefit Building Society v De Baer** [1968] 1 372, ChD.

Suspension of execution of order—

Likelihood that mortgagor will be able to pay sums due within a reasonable period—Likelihood a question of fact—Proposal by mortgagor to sell property in order to pay sums due—Whether court entitled to take prospective sale into account for purpose of determining whether sums likely to be paid within reasonable period—Administration of Justice Act 1970, s 36(1). **Royal Trust Co of Canada v Markham** [1975] 3 433, CA.Likelihood that mortgagor will be able to pay sums due within a reasonable period—Sums due—Arrears or whole of redemption moneys—Power to suspend execution conditional on likelihood of mortgagor paying sums due—Mortgagor failing to pay instalments—Mortgagee entitled to redemption—Mortgagee seeking possession—Mortgagor likely to be able to pay arrears within reasonable period and to pay future instalments—No prospect of mortgagor paying redemption moneys within reasonable period—Mortgagor not entitled to suspension of possession order—Administration of Justice Act 1970, s 36(1)(2). **Halifax Building Society v Clark** [1973] 2 33, ChD.Period of suspension—Definite or indefinite period—Whether court's jurisdiction limited to suspending execution for definite or ascertainable period—Administration of Justice Act 1970, s 36(1)(2)—Administration of Justice Act 1973, s 8(2). **Royal Trust Co of Canada v Markham** [1975] 3 433, CA.

Time for possession—

Twenty-eight days order. **Barclays Bank Ltd v Kiley** [1961] 2 849, ChD.

Originating summons—

Service—

Mortgagee's action for possession. *See* Action by mortgagee for possession—Originating summons, *ante*.

Payment—

Apportionment of principal—

Effect of Rent Restrictions Acts—Mortgage of dwelling-house divided into six flats—Four flats outside Rent Restrictions Acts and two flats within them on basis of rateable values—Apportionment of principal secured by mortgage between the two flats and the four flats—Whether protection of Rent Restrictions Acts removed from principal apportioned to four flats—Increase of Rent and Mortgage Interest (Restrictions) Act 1920, s 12(5) (as applied by Rent and Mortgage Interest Restrictions Act 1939, s 3(1)). **Coutts & Co v Duntroon Investment Corp Ltd** [1958] 1 51, ChD.

Summary judgment—

Leave—Action to recover principal moneys and interest due under second mortgage—Default of appearance by mortgagor—Mortgaged property sold by first mortgagee before issue of writ—Whether judgment could be entered summarily by plaintiff or whether leave required—Meaning of 'mortgage'—RSC Ord 13, r 1. Ord 55, rr 5A, 5C, 5E(a). **Newnham v Brown** [1966] 2 229, CA.

Possession of mortgaged property—

Action by mortgagee for possession. *See* Action by mortgagee for possession, *ante*.

Matrimonial home—

Deserted wife in occupation. *See* **Husband and wife** (Deserted wife's right to remain in matrimonial home—Mortgage).

Mortgagee's right to recover possession—

Discretion to allow mortgagor time to assign mortgage. **Braithwaite v Winwood** [1960] 3 642, ChD.Instalment mortgage—Mortgage providing that on default by mortgagor loan immediately repayable and mortgagee entitled to possession—Whether jurisdiction to refuse order for possession and to make order for payment on terms—Jurisdiction to adjourn application. **Birmingham Citizens Permanent Building Society v Caunt** [1962] 1 163, ChD.Mortgage containing no restriction on mortgagee's right—Judges' Practice Directions—RSC Ord 55, r 5A. **Fourmaids Ltd v Dudley Marshall (Properties) Ltd** [1957] 2 35, ChD.Nature of mortgagee's action—Whether mortgagee's action for possession an action for recovery of land or for enforcement of the mortgage—County Courts Act 1934, ss 48, 52—County Courts Act 1955, s 2, Sch I, para 4. **R v Judge Dutton Briant, ex parte Abbey National Building Society** [1957] 2 625, QBD.No default under mortgage—Failure of collateral security—Obligation to pay principal and interest deferred for ten years—Mortgagor not in default under mortgage—Life assurance policy as collateral security—Mortgagor allowing policy to lapse—Whether implied term in mortgage that mortgagee not entitled to recover possession except in case of default by mortgagor. **Western Bank Ltd v Schindler** [1976] 2 393, CA.

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Possession of mortgaged property (cont)—

Mortgagee's right to recover possession (cont)—

Order for possession—Furniture left on premises—Application for order for removal of furniture—Whether order for possession was for vacant possession—RSC App H, Form No 8. **Norwich Union Life Insurance Society v Preston** [1957] 2 428, ChD.

Mortgagor not in occupation—

Agreement between occupier and mortgagor made before mortgagor had any title to mortgaged premises—Payment of lump sums to mortgagor by tenant said to be rent for a specified period—Whether payments constituted rent or a fine—Whether tenancy binding on mortgagee—Law of Property Act 1925, s 99(6), s 205(1)(xxiii). **Hughes v Waite** [1957] 15 603, ChD.

Mortgage subject to existing tenancy—New tenancy granted—New tenancy effecting surrender of old tenancy by operation of law as between tenant and mortgagor—New tenancy not binding on mortgagee—Whether old tenancy surrendered as between tenant and mortgagee. **Barclays Bank Ltd v Stasek** [1956] 3 439, ChD.

Mortgagor's power of leasing excluded except with consent of mortgagees—Mortgagees having knowledge of tenancy for eight months prior to notice to quit—Implied confirmation of tenancy. **Parker v Braithwaite** [1952] 2 837, ChD.

Need to join occupier as defendant to claim for possession by mortgagee. RSC Ord 55, r 5A. **Leicester Permanent Building Society v Shearley** [1950] 2 738, ChD.

Order for possession against occupier although mortgagor not joined in proceedings. RSC Ord 55, rr 5A, 8A. **Alliance Building Society v Shave** [1952] 1 1033, ChD.

Power of leasing only with consent in writing of mortgagee—Tenancy granted by mortgagor—No evidence of consent in writing—Mortgagee having knowledge of tenancy—Mortgagee going without interest for many years—Whether mortgagee entitled to recover possession against tenant as trespasser—Law of Property Act 1925, s 99. **Taylor v Ellis** [1960] 1 549, ChD.

Registered land—Oral tenancy agreed and completed by tenant's entry before mortgagor has completed purchase of property—Purchase completed and mortgage granted on same day—Whether mortgagee entitled to possession as against tenant—Land Registration Act 1925, ss 20(1), 27(3), 70(1)(g)—Law of Property Act 1925, s 55(c). **Grace Rymer Investments Ltd v Waite** [1958] 2 777, CA.

Mortgagor's right to possession—

Circumstances in which term will be implied that mortgagor entitled to possession against mortgagee—Instalment mortgage—Mortgagor only in technical possession—Whether an implied term that mortgagor entitled to possession as against mortgagee. **Esso Petroleum Co Ltd v Alstonbridge Properties Ltd** [1975] 3 358, ChD.

Instalment mortgage—Implied term that mortgagor entitled to possession so long as instalments paid—Default in payment of instalments—Subsequent tender of arrears—Whether tender capable of reviving implication that mortgagor entitled to possession. **Esso Petroleum Co Ltd v Alstonbridge Properties Ltd** [1975] 3 358, ChD.

Order for possession. *See* Order for possession of mortgaged property, *ante*.

Persons not parties to mortgage claiming to be entitled to possession—

Adjournment of originating summons into open court. **Practice Note** [1958] 1 128, ChD.

Occupiers claiming protection from eviction—Practice—Whether summons necessary—Whether mortgagee was 'owner' for the purposes of the Protection from Eviction Act 1964, s 1(2). **Bolton Building Society v Cobb** [1965] 3 814, ChD.

Premises subject to Rent Restrictions Acts—

Default in payment of mortgaged interest for more than 21 days—Subsequent payment—Loss of protection—Increase of Rent and Mortgage Interest (Restrictions) Act 1920, s 7. **Nichols v Walters** [1953] 2 1516, CA.

Second mortgagee—

Subsequent encumbrances—Enquiry of prior mortgagees before applying for possession. **Practice Directions** [1968] 1 752, ChD, [1970] 1 671, ChD.

Suspension of execution of order for possession—

Discretion of court—Mortgagee obtaining order for possession of dwelling-house—Mortgagor not in default under mortgage—Failure of collateral security—Obligation to pay principal and interest deferred for ten years—Whether court having power to suspend order for possession where mortgagor not in default—Whether court bound to exercise discretion in favour of mortgagor—Administration of Justice Act 1970, s 36(1). **Western Bank Ltd v Schindler** [1976] 2 393, CA.

Postponement of redemption. *See* Clog on equity of redemption—Postponement of redemption, *ante*.

Power of leasing—

Agricultural land—

Statutory power of leasing although contrary intention expressed in deed—Covenant by mortgagor against letting without consent of mortgagee—Effect of covenant—Avoiding lease or tenancy granted outside statutory powers—Law of Property Act 1925, s 99—Agricultural Holdings Act 1948, Sch 7, para 2. **Rhodes v Dalby** [1971] 2 1144, ChD.

Consent of mortgagee—

Lease created without consent—Whether mortgagees entitled to regard themselves as no longer bound by their own covenants—Common law power of leasing—Law of Property Act 1925, ss 99, 152. **Iron Trades Employers' Insurance Assn v Union of House and Land Investors Ltd** [1937] 1 481, ChD.

No power to lease without consent but lessee not concerned to see that consent given—Lease granted by mortgagor in possession without consent of mortgagee—Tenancy by estoppel. **Lever Finance Ltd v Trustees of Property of Needleman** [1956] 2 378, ChD.

Underlease without consent—Sale by mortgagee of mortgaged premises to second mortgagee—Sale expressed in contract to be subject to underlease but underlease not mentioned in conveyance—Rights of purchaser against underlessee—Law of Property Act 1925, s 89(1)(a). **Rust v Goodale** [1956] 3 373, ChD.

MORTGAGE (cont)

Power of leasing (cont)—

Rent—

Reservation of best rent that can reasonably be obtained—Lease providing for rent to be fixed by a valuer after execution—Whether compliance with statutory requirements—Law of Property Act 1925, s 99. **Lloyds Bank Ltd v Marcan** [1973] 3 754, CA.

Statutory power—

Oral tenancy—Mortgagee granting oral tenancy for two years of bungalow on mortgaged premises—Whether necessary to include condition of re-entry for non-payment of rent—Whether necessary to deliver particulars of tenancy to mortgagor—Law of Property Act 1925, s 99(7)(11). **Rhodes v Dalby** [1971] 2 1144, ChD.

Oral tenancy—Oral agreement by mortgagors for tenancy from year to year—Tenancy agreement containing no provision for re-entry—Whether tenancy validated—Law of Property Act 1925, ss 99(7), 152(1), (6). **Pawson v Revell** [1958] 3 233, CA.

Tenancy by estoppel—

Tenancy agreement entered into by mortgagor before completion of purchase of mortgaged property. **Woolwich Equitable Building Society v Marshall** [1951] 2 769, ChD.

Tenancy agreement entered into by mortgagor before completion of purchase of mortgaged property—Mortgage granted to facilitate purchase—Exclusion of mortgagor's power of leasing. **Coventry Permanent Economic Building Society v Jones** [1951] 1 901, ChD.

Tenancy agreement entered into by mortgagor before completion of purchase of mortgaged property—Mortgage of premises by purchaser by deed dated day after completion—Exclusion of mortgagor's power of leasing—Position of tenant. **Universal Permanent Building Society v Cooke** [1951] 2 893, CA.

Tenancy granted by mortgagor before completion of purchase of mortgaged property—Legal charge granted to facilitate purchase—Recital that property vested in mortgagor. **Church of England Building Society v Piskor** [1954] 2 85, CA.

Priority—

Apparent owner charging fund—

Appointment of settled fund so that investments could be deposited at Lloyd's by underwriter—Trusts declared by deed in relation to investments deposited—Investments subject by the deed of appointment to trusts of settlement in priority to interests of underwriter under deed declaring trusts—Charge of interest of underwriter under deed declaring trusts—Charge of interest of underwriter under deed declaring trust to secure repayment of money lent to him—Priority as between chargee and trustees of settlement—Rule in *Dearle v Hall*. **B S Lyle Ltd v Rosher** [1958] 3 597, HL.

Equitable interest. *See* Equitable interest—Priority, *ante*.

Equitable mortgage. *See* Equitable mortgage—Priority, *ante*.

Registered land. *See* Land registration (Priority—Concurrent applications for registration).

Proviso for redemption. *See* Redemption—Proviso for redemption, *post*.

Receiver—

Appointment—

By mortgagee in possession—Collateral mortgage of policy of insurance—Non-payment of premiums—Whether breach of provision in mortgage—Law of Property Act 1925, s 101(1)(iii), 103(iii). **Refuge Assurance Co Ltd v Pearlberg** [1938] 3 231, CA.

Interest in arrear—Whether receiver under any statutory duty to rating authority to pay rates—Law of Property Act 1925, s 109(8). **Liverpool Corp v Hope** [1938] 1 492, CA.

War-time. *See* Emergency legislation (Mortgage—Appointment of receiver).

Duty to account—

Account to mortgagee—Receiver agent of mortgagor—Statutory duty to account—Law of Property Act 1925, s 109. **Leciester Permanent Building Society v Butt** [1943] 2 523, ChD.

Liability for breach of statutory duty on mortgaged premises—

Failure to maintain fire escape in good order—Employee on premises injured by fire—'Owner'—London Building Acts (Amendment) Act 1939, ss 33, 133(2). **Solomons v R Gertzenstein Ltd** [1954] 1 1008, QBD.

Tenancy—

Acceptance of tenant of mortgagor as mortgagees' tenant—Mortgagor's covenant not to create any underlease or tenancy—Order for possession obtained against mortgagor—Subsequent letting by mortgagors to weekly tenant—Mortgagees' appointment of receiver of rents—Letter to tenant referring to mortgagors as 'your former Landlord'—Mortgagees' claim for possession—Whether new tenancy created. **Chatsworth Properties Ltd v Effiom** [1971] 1 604, CA.

Acceptance of tenant of mortgagor as mortgagee's tenant—Mortgagor's power of leasing restricted to leasing with consent in writing of mortgagee—Tenancy granted without consent—Receipt of rent by receiver appointed by mortgagee—Notice to quit given by mortgagee and containing statement that tenant held as tenant of mortgagee. **Stroud Building Society v Delamont** [1960] 1 749, ChD.

Repairs done by occupier on advice of receiver—Whether sufficient to show that relationship of landlord and tenant constituted. **Barclays Bank Ltd v Kiley** [1961] 2 849, ChD.

Redemption—

Lease mortgaged by legal charge—

Mortgagee obtained relief against forfeiture of lease on default of mortgagor—Order giving relief granted new lease for full residue of term—Whether new lease subject to mortgagor's right of redemption—Law of Property Act 1925, s 146(4). **Chelsea Estates Investment Trust Co Ltd v Marche** [1955] 1 195, ChD.

Lease with option to purchase freehold reversion—

Option separately assigned to mortgagee—Option exercised by mortgagee—Whether mortgagor entitled to conveyance of reversion on redemption. **Nelson v Hannam and Smith** [1942] 2 680, CA.

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Redemption (cont)—

Mortgagee's entitlement to arrears of interest—

Action for redemption by mortgagor—Sale of mortgaged property by agreement—Whether mortgagee entitled to more than six years' arrears of interest out of proceeds of sale—Whether six year limitation period for recovery of interest by mortgagee applicable to redemption action—Limitation Act 1939, s 18(5). **Holmes v Cowcher** [1970] 1 1224, ChD.

Proviso for redemption—

Construction of mortgage providing for repayment by instalments and redemption on date when last instalment repayable. **Mohamedali Jaffer Karachiwalla v Noorally Rattanshi Rajan Nanji** [1959] 1 137, PC.

Remedies of mortgagee—

Action for the recovery of land—

Jurisdiction of county court. *See* **County Court** (Jurisdiction).

Enforcement of remedy—

Courts emergency powers—Bankruptcy of mortgagor—Trustee respondent to application. *Re* **Legal Charge dated 26th November 1937** [1949] 1 477, ChD.

Foreclosure or sale—

House subject to Rent Restrictions Acts—Transfer of mortgage to statutory tenant—Whether statutory tenancy abandoned. **Silsby v Holliman** [1955] 2 373, ChD.

Moneylender's security—

Originating summons for repayment—Whether particulars required by RSC Ord 20, r 10, and RSC Ord 3, r 10, must be included in summons or affidavit in support—RSC Ord 55, r 5A. **Lewis v Packer** [1960] 1 720, ChD.

Puisne mortgagee—

Title to mortgaged property extinguished—Sale by first mortgagee—Right of puisne mortgagee to surplus profits—Law of Property Act 1925, ss 104, 105, 107, 116—Limitation Act 1939, ss 12, 16. **Young v Clarey** [1948] 1 197, ChD.

Rectification of register to remove caution. *See* **Land registration** (Rectification of register—Caution—Cautions entered against mortgagee's interest in land).

Rent Restrictions Acts—

Interest in arrear for 21 days—Subsequent payment—Whether protection restored—Increase of Rent and Mortgage Interest (Restrictions) Act 1920, s 7 (as applied by Rent and Mortgage Interest Restrictions Act 1939, s 3(1)). **Coutts & Co v Duntroon Investment Corp Ltd** [1958] 1 51, ChD.

Sale. *See* **Sale, post**.

Rent—

Best rent—

Lease granted by mortgagor. *See* **Power of leasing**—Rent, *ante*.

Rent restriction—

Loss of protection. *See* **Possession of mortgaged property**—Premises subject to Rent Restriction Acts, *ante*.

Repayment—

Demand—

Service—Death of mortgagor—Letter demanding repayment in accordance with instrument of charge addressed by mortgagee to mortgagor six months after his death—Whether demand validly made—Whether receiver's acts established relationship of landlord and tenant between mortgagee and occupiers—Possession—Parties—Personal representatives of deceased mortgagor not necessary parties if not prejudiced by order. **Barclays Bank Ltd v Kiley** [1961] 2 849, ChD.

Mortgage retaining debt out of proceeds of mortgaged policy—

Acting as agent for mortgagor. *Re* **Hodge's Policy** [1957] 3 584, CA.

Sale of mortgaged property—

Unliquidated claim by mortgagor against mortgagee related to mortgage debt—Whether mortgagee entitled to repayment out of proceeds. **Samuel Keller (Holdings) Ltd v Martins Bank Ltd** [1970] 3 950, CA.

Requisition of land subject to mortgage—

Application of compensation—

Land leased to company—Covenant by lessee to insure against fire—Insurance to be laid out in re-building—Mortgage by lessee—Property destroyed by fire while requisitioned—Insurance policy not kept up—Whether compensation to be applied in same manner as money receivable under policy. **Radnor (Earl) v Folkestone Pier and Lift Co** [1950] 2 690, ChD.

Restraint of trade. *See* **Log on equity of redemption**—Restraint of trade, *ante*.

Restrictions on interest. *See* **Statutory restrictions**—Interest, *post*.

Restrictions on mortgagee's powers. *See* **Sale**—Statutory restrictions on mortgagee's powers, *post*.

Sale—

Application of proceeds—

Claim by moneylender as second mortgagee—Claim against mortgagor statute-barred—'Person entitled to the mortgaged property'—Law of Property Act 1925, s 105—Moneylenders Act 1927, s 13(1). *Re* **Martin's Mortgage Trusts** [1951] 1 1053, CA.

Duty of first mortgagee to subsequent encumbrancers. **Weld Blundell v Synott** [1940] 2 580, KBD.

MORTGAGE (cont)

Sale (cont)—

Appropriation of proceeds of sale—

Validity as against liquidator of company—Secured creditor of company in creditors' voluntary winding-up realised security and appropriated proceeds to satisfying non-preferential part of company's indebtedness—Secured creditor, a bank, also creditor for preferential indebtedness in respect of moneys advanced—Whether appropriation valid against liquidators—Companies Act 1948, s 319(4). **Re William Hall (Contractors) Ltd** [1967] 2 1150, ChD.

Duty of mortgagee—

Standard of duty in exercising power of sale—Duty to take reasonable care to obtain price equal to market value—Site with planning permission for development with flats—Planning permission also for development with houses—Advertisement of sale referring only to permission for houses—Mortgagees aware of both permissions—Estate agents handling sale unaware of permission for flats at time advertisements distributed—Estate agents subsequently apprised of permission for flats—Allowing sale to go ahead without further advertisement—Evidence that site would have realised substantially higher price if permission for flats advertised—Whether mortgagees liable to mortgagors for their own and agents' negligence in failing to realise full market price. **Cuckmere Brick Co Ltd v Mutual Finance Ltd** [1971] 2 63, CA.

Exercise of power of sale by mortgagee—

Equitable estoppel—Conduct estopping mortgagee from exercising power. **Braithwaite v Winwood** [1960] 3 642, ChD.

Local authority—House sold by local authority to tenant subject to mortgage in favour of authority—Local authority reserving right of pre-emption under statutory powers—Statutory power of sale becoming exercisable on default by mortgagor—House transferred by local authority to itself—Whether transfer valid—Law of Property Act 1925, s 101(1)—Housing Act 1957, s 104. **Williams v Wellingborough Borough Council** [1975] 3 462, CA.

Sale overreaching prior dealing by mortgagor—Mortgagor contracting to sell mortgaged property to plaintiffs—Registration of contract by plaintiffs as land charge—Subsequent contract entered into by mortgagee in exercise of power of sale and with notice of the previous contract—Whether mortgagee can be restrained from exercising power of sale. **Duke v Robson** [1973] 1 481, CA.

Leasehold property—

Covenant by lessee in lease not to assign—Contract for sale by lessee's mortgagee—Condition that sale subject to mortgagee's obtaining consent to assignment of lease to purchaser—Date fixed by contract for completion passed—Mortgagee obtained order for possession—Lessee tendered redemption moneys before time for delivering possession under the order arrived—Lessee applied for a stay of proceedings for possession, and brought an action to redeem the mortgage—Whether contract for sale put an end to the right of redemption—Law of Property Act 1925, ss 101(1), 104(1). **Property and Bloodstock Ltd v Emerton. Bush v Property and Bloodstock Ltd** [1967] 3 321, CA.

Option—

Grant of option by building society mortgagee—Validity. **Cottrill v Steyning and Littlehampton Building Society** [1966] 2 296n, QBD.

Power to authorise sale in action for foreclosure—

Right to foreclosure—Breach of covenant to pay interest—Mortgage debt not due—No express proviso for redemption—Mortgagee bound to accept payment of principal in instalments if covenant to pay interest punctually observed—Whether mortgagor having forfeited right to redemption on breach of covenant to pay interest on loan—Whether mortgagee having right to foreclosure—Whether court having power to authorise sale—Law of Property Act 1925, s 91(2). **Twentieth Century Banking Corporation Ltd v Wilkinson** [1976] 3 361, ChD.

Statutory restrictions on mortgagee's powers—

Sale with consent of mortgagor—Validity—Courts (Emergency Powers) Act 1914. **Colebrook v Watson Investment Co** [1944] 2 115, ChD.

Uncompleted contract of sale rescinded—

Resale by mortgagee at lower price to another purchaser—Mortgagee not accountable to mortgagor for purchase price under first sale which he had never received. **Wright v New Zealand Farmers' Co-operative Assn of Canterbury Ltd** [1939] 2 701, PC.

Scale fee—

Solicitor—

Acting for both mortgagor and mortgagee—Charging below scale fee. *See Solicitor* (Remuneration)—Charging below scale fee—Solicitor acting for both mortgagor and mortgagee).

Search—

Land charge—

Name of estate owner. *See Land charge* (Search—Official certificate of search—Conclusiveness).

Service of demand for repayment—

Death of mortgagor. *See Repayment—Demand—Service—Death of mortgagor, ante.*

Small dwellings legislation. *See Housing* (Small dwellings);

Solicitor—

Lien *See Solicitor* (Lien—Mortgage).

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Stamp duty. *See Stamp duty* (Mortgage, bond, debenture or covenant).

Statutory power of leasing. *See Power of leasing—Statutory power, ante.*

Statutory restrictions—

Interest—

Interest reserved as amount payable after deduction of tax—Restriction on gross rate payable—Rent and Mortgage Interest Restrictions Act 1939, s 3, Sch I. **Warrilow v Ward** [1942] 1 366, ChD.

MORTGAGE (cont)

Subrogation—

Vendor's lien. *See* **Sale of land** (Vendor's lien—Subrogation—Mortgage).

Summary judgment—

Mortgagee's action to recover principal moneys and interest under second mortgage. *See* **Payment**—Summary judgment—Leave—Action to recover principal moneys and interest due under second mortgage, *ante*.

Tenancy agreement—

Registration as estate contract—

Effect on subsequent mortgages. *See* **Land charge** (Estate contract—Tenancy agreement—Effect of registration on subsequent mortgages).

Transfer—

No notice to mortgagor—

Debt due from original mortgage to mortgagor—Set-off. **Parker v Jackson** [1936] 2 281, ChD.

Transfer of mortgage by way of gift—

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Two properties mortgaged together—

Sale of one subject to the mortgage—

Debt discharged by property retained—Exoneration or contribution. **Re Mainwarings' Settlement Trusts** [1936] 3 540, CA.

MORTMAIN

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MOSLEM LAW

Divorce—

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Recognition. *See* **Divorce** (Foreign decree—Recognition by English court—Foreign divorce not judicial act—Marriage celebrated and divorce occurring in England—Divorce by talaq).

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Crash helmet—

Failure to wear—

Contributory negligence. *See* **Negligence** (Contributory negligence—Road accident—Crash helmet).

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Effect on exception clause. *See* **Contract** (Fundamental breach—Effect on exception clause—Affirmation of contract—Hire-purchase of motor cycle).

Provisional licence—

Bicycle not having sidecar attached—

Conditions attached to licence. *See* **Road traffic** (Driving licence—Conditions attached to provisional licences—Motor bicycle having sidecar attached).

MOTOR INSURANCE

Breach of statutory duty. *See* **Using vehicle or causing or permitting vehicle to be used on road without policy being in force**—Cause or permit—Breach of statutory duty, *post*.

Certificate—

Delivery to insured—

Certificate received by third party—Policy prepared for and signed by insured—Premium paid by third party—Third party to be repaid by insured in instalments—Certificate retained by third party pending repayment—Whether certificate delivered to third party as agent for insured—Road Traffic Act 1930, ss 36, 40. **Starkey v Hall** [1936] 2 18, KBD.

False statement to obtain insurance certificate—

Gain or advantage to proposer—Whether necessary to prove gain or advantage resulting from deception—Road Traffic Act 1930, s 112(2). **Jones v Meatyard** [1939] 1 140, KBD.

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Compulsory insurance against third party risks—

Breach of statutory duty—

Owner uninsured—Claim against owner on ground of breach of statutory duty not to permit an uninsured person to drive—Road Traffic Act 1934, s 35(1). **Daniels v Vaux** [1938] 2 271, KBD.

Rights of third party—Driver without means—Liability of owner of vehicle to satisfy judgment against driver—Effect on owner's liability of independent contract of insurance—Road Traffic Act 1930, s 35(1). **Corfield v Groves** [1950] 1 488, KBD.

Certificate of insurance—

False statement for purpose of obtaining insurance certificate—Withholding material information for the like purpose—Whether guilty mind an element of the offence—Road Traffic Act 1960, s 235(2). **R v Cummerson** [1968] 2 863, CA.

MOTOR INSURANCE (cont)

Compulsory insurance against third party risks (cont)—

Disqualification for using etc vehicle on road without policy being in force. *See* Disqualification for using etc vehicle on road without policy being in force, *post*.

Extension clause—

Person driving with consent of insured. *See* Compulsory insurance against third party risks—Person driving with consent of insured, *post*.

Extent of cover—

Driver under age of 16—Licence obtained by false pretences—Motor car driven with owner's permission—Insurers willing to admit liability, under misapprehension of legal effect of policy—Road Traffic Act 1930, ss 7(4), 9(1)(2)(5), 35(1). *Mumford v Hardy* [1956] 1 337, QBD.

Learner being taught to drive—Instructor's policy covering user of vehicle while he was driving it or any other person with his permission provided that person had a driving licence—Instructor holding steering wheel and handbrake—Learner not insured—Instructor and learner both 'drivers'—Use of vehicle by learner covered by instructor's policy—Road Traffic Act 1930, s 35(1). *Langman v Valentine* [1952] 2 803, QBD.

Negligence of permitted driver for which owners of vehicle not liable—Road Traffic Act 1930, ss 35, 36. *Sutch v Burns* [1944] 1 520, CA.

Son under 17 driving father's car—Father, licensed to drive, sitting in passenger's front seat but not touching any controls—Policy in force but excepting liability where car driven by unlicensed driver—Road Traffic Act 1930, s 35(1). *Evans v Walkden* [1956] 3 64, QBD.

Liabilities required to be covered—

Employer—Whether employer required to take out policy covering personal liability of servant while driving vehicle in the course of his employment—Road Traffic Act 1930, ss 35(1), 36(1), 121. *Lister v Romford Ice & Cold Storage Co Ltd* [1957] 1 125, HL.

Passengers carried for hire or reward in private vehicle—

Owner of car regularly over period of years driving fellow workers to place of work—Regular and understood arrangement that passengers would pay for journey—Payment sometimes in kind—Owner of car not advertising service or soliciting custom—Whether passengers being carried for 'hire or reward'—Road Traffic Act 1960, s 203(4). *Albert v Motor Insurers' Bureau* [1971] 2 1345, HL.

Owner of minibus regularly over period of 11 months driving fellow workers to place of work—Minibus fitted with seats for 11 passengers—Informal arrangement among regular passengers to pay cost of petrol—Owner not buying petrol for any of the journey—Whether passengers being carried for 'hire or reward'—Road Traffic Act 1960, s 203(4). *Motor Insurers' Bureau v Meanen* [1971] 2 1372, HL.

Passenger on private solo motor cycle—Regular voluntary contribution towards expenses—Vehicle in which passengers are carried for hire or reward—Whether carriage for 'reward' includes a case where no legal obligation to pay—Whether passenger so carried compulsorily insurable—Road Traffic Act 1930, ss 35(1), 36(1)(b)(ii). *Coward v Motor Insurers Bureau* [1962] 1 531, CA.

Passenger on three occasions paying owner 10s for a lift—Passenger injured—Vehicle not habitually used for hire or reward—Whether owner bound to insure against liability to passenger—Whether Motor Insurers' Bureau liable—Road Traffic Act 1960, s 203. *Connell v Motor Insurers' Bureau* [1969] 3 572, CA.

Payment for journey—Private car policy—Whether compulsory third-party insurance necessary—Road Traffic Act 1930, s 36(1). *Wyatt v Guildhall Insurance Co Ltd* [1937] 1 792, KBD.

Regular voluntary contribution towards expenses—Policy not covering carriage of passengers for hire or reward—'Hire'—'Reward'—Whether carriage for 'reward' included a case where there was no legal obligation to pay—Road Traffic Act 1930, ss 35, 36, 38. *Bonham v Zurich General Accident & Liability Insurance Co Ltd* [1945] 1 427, CA.

Payment for hospital expenses—

Passenger injured—Voluntary passenger—Policy extending to voluntary passengers—Hospital expenses of passenger's treatment sought to be recovered by hospital from insurers—Insurers ignorant of hospital treatment at time when they paid passenger—Whether hospital subsequently entitled to recover their expenses from insurers—Whether payment by insurers made in consequence of policy issued under Act of 1930—Whether voluntary passenger was a person within s 36(2) of Act of 1930—Road Traffic Act 1930, s 36(2) (as substituted by Road and Rail Traffic Act 1933, s 33). *Barnet Group Hospital Management Committee v Eagle Star Insurance Co Ltd* [1959] 3 210, QBD.

Person carried by reason of or in pursuance of a contract of employment—

Employee carrying fellow employee back to work—Employee under no obligation to carry fellow employees—Employee entitled to passenger allowance from employer—Fact of allowance reason for employee carrying fellow employee—Fellow employee a person being carried by reason of his contract of employment—Indemnity under policy for liability to passenger arising from employee's negligent driving. *Nottingham v Aldridge (Prudential Assurance Co Ltd, Third Party)* [1971] 2 751, QBD.

Employee provided with transport within certain limits—Employee injured when travelling beyond those limits—Whether insurance compulsory—Road Traffic Act 1930, s 36(1)(b)(ii). *Izzard v Universal Insurance Co Ltd* [1937] 3 79, HL. *Baker v Provident Accident and White Cross Insurance Co Ltd* [1939] 2 690, KBD.

Loan of car to employee on condition that fellow employee given lifts to work—Whether fellow employee passenger in car 'by reason of or in pursuance of contract of employment'—Whether insurance compulsory—Acceptance of liability by Motor Insurers' Bureau—Road Traffic Act 1960, s 203(4). *Vandyke v Fender (Sun Insurance Office Ltd, Third Party)* [1970] 2 335, CA.

MOTOR INSURANCE (cont)**Compulsory insurance against third party risks (cont)—****Persons driving with consent of insured—**

Indemnity in like manner of authorised driver while driving against liability in respect of any claim by any person including passengers—Claim against authorised driver by policyholder—Road Traffic Act 1930, ss 35(1), 36(1)(b),(4). *Digby v General Accident Fire and Life Assurance Corp Ltd* [1942] 2 319, HL.

Indemnity of authorised driver—Injury to employees excluded—Employee injured—Whether authorised driver can claim under policy. *Richards v Cox* [1942] 2 624, CA.

Insurers of permitted driver indemnified driver—Whether entitled to contribution from insurers of owner—Road Traffic Act 1930, s 36(4). *Austin v Zurich General Accident & Liability Insurance Co Ltd* [1945] 1 316, CA.

Owner's son named driver in policy—Unlimited permission given by owner to son to drive car and never withdrawn—Owner died—Accident while car still part of deceased's estate—Executrix of owner had not revoked son's permission to drive—Whether son protected by policy against third party claims. *Kelly v Cornhill Insurance Co Ltd* [1964] 1 321, HL.

Using vehicle or causing or permitting vehicle to be used on road without policy being in force.

See Using vehicle or causing or permitting vehicle to be used on road without policy being in force, *post*.

Conditions—**Absolute conduct and control of proceedings—**

Claim for damages—Settlement without consulting insured—Liability of insured for first £5 of sum paid in settlement. *Beacon Insurance Co Ltd v Langdale* [1939] 4 204, CA.

Duty of insurance company and its legal advisers. *Groom v Crocker* [1938] 2 394, CA.

Breach of condition—

Waiver of breach—Insured failing to comply with condition to inform insurers within five days of claim—Insurers' delay in electing whether to refuse to indemnify. *Allen v Robles* [1969] 3 154, CA.

Notice of claim—

Notification to insurers—Failure of insured to inform insurers of accident and to forward notice of prosecution and summons—Insurers informed by other persons before hearing of summons—No prejudice to insurers—Whether condition a bar to recovery under policy—Waiver of condition. *Lickiss v Milestone Motor Policies at Lloyds* [1966] 2 972, CA.

Roadworthiness—

Condition that (a) imposed duty to take precautions to keep vehicle in good repair and (b) excluded liability if vehicle driven in unsafe condition—Whether sentence (a) imposed personal obligation on insured but not vicarious liability for casual negligence of employee—Whether exclusion, by virtue of (b), applied where no breach of (a)—Failure of insured, owners of a fleet of motor coaches, to operate an adequate system of maintenance and repair—Unsafe condition of vehicle due to that failure—Whether insurers liable—Whether insurers entitled to recover sums paid under Road Traffic Act 1960, s 206. *Liverpool Corp v T & H R Roberts (a firm) (Garthwaite, Third Party)* [1964] 3 56, Assizes.

Policy originally giving comprehensive cover—Modification to cover third party risks only by deletion of loss and damage section—Condition requiring insured to safeguard vehicle from loss or damage and maintain it in efficient condition—Claim against insured by third party—Satisfaction by insurers of sum awarded—Insurers claiming reimbursement by insured—Breach of condition—Whether condition applicable after deletion of loss and damage section. *The New India Assurance Co Ltd v Yeo Beng Chow* [1972] 3 293, PC.

Cover note—**Duration of cover—**

Commencement 11.45 am on 2nd December 1959—Cover note expressed to be valid for 15 days from commencement date of risk—Insurance continued for 15 days from midnight on day of commencement—Insurers liable in respect of accident occurring at 5.45 pm on 17th December. *Cartwright v MacCormack (Trafalgar Insurance Co Ltd, third parties)* [1963] 1 11, CA.

Disqualification for using etc vehicle on road without policy being in force—

Power to limit disqualification to driving of vehicle of the same class or description as vehicle in relation to which offence committed—

Disqualification limited to 'five hundredweight vehicles'—No such vehicle mentioned in Act—Road Traffic Act 1930, ss 2(1), 6(1), proviso. *Petherick v Buckland* [1955] 1 151, QBD.

Lorry driver using private car—Whether recorder having power to limit disqualification to private motor vehicle—Road Traffic Act 1930, s 6(1), s 35(2). *Burrows v Hall* [1950] 2 156, KBD.

Special reasons for not disqualifying—

Assured misled as to effect of policy—Proposal form signed for general cover—Temporary general cover certificate issued, but policy limited to named driver—Road Traffic Act 1930, s 35(2). *Labrum v Williamson* [1947] 1 824, KBD.

Desirability of stating special reasons. *R v Leicester Recorder, ex parte Gabbitts* [1946] 1 615, KBD.

Farm labourer driving uninsured tractor—Road Traffic Act 1930, s 35(2). *Blows v Chapman* [1947] 2 576, KBD.

Insurers willing to admit liability—Taxi-cab under repair—Insurance cover suspended during overhaul—Renewed user through oversight—Road Traffic Act 1930, s 35(2). *Pilbury v Brazier* [1950] 2 835, KBD.

Misapprehension of legal effect of policy—Date from which disqualification runs where quarter sessions allow appeal against disqualification—Road Traffic Act 1930, s 35(1)(2). *Rennison v Knauler* [1947] 1 302, KBD.

No special reasons found—Conditional discharge not applicable—Road Traffic Act 1930, s 35(1)(2)—Criminal Justice Act 1948, s 7(1). *Surtees v Benewith* [1954] 3 261, QBD.

MOTOR INSURANCE (cont)

Disqualification for using etc vehicle on road without policy being in force (cont)—

Special reasons for not disqualifying (cont)—

No special reasons found—Conditional discharge—Exercise of discretion—Road Traffic Act 1930, s 35(2)—Criminal Justice Act 1948, ss 7(1), 12(2). **Taylor v Saycell** [1950] 2 887, KBD.

Owner's policy covering only owner and persons in his employ—Lorry driven back to owner's premises by garage proprietor—Garage proprietor not in owner's employ—Garage proprietor not insured—Road Traffic Act 1930, s 35(1)(2). **Lyons v May** [1948] 2 1062, KBD.

Penalty considered too severe—Whether a 'special reason'—Road Traffic Act 1930, s 35(1)(2). **Williamson v Wilson** [1947] 1 306, KBD.

Reasons special to the offence—Lonely road, absence of traffic, short distance—Road Traffic Act 1930, s 35(1)(2). **Reay v Young** [1949] 1 1102, KBD.

Use of motor vehicle not covered by insurance policy—Dismissal of charge under Probation of Offenders Act 1907, s 1(1)—Good character—Road Traffic Act 1930, s 35(1)(2). **Gardner v James** [1948] 2 1069, KBD.

Driving school—

Implied duty to insure against third party risks—

Car provided by school for driving lessons and driving test—Pupil not covered by insurance—

Implied term in contract with school that cover is provided. **British School of Motoring Ltd v Simms** [1971] 1 317, Assizes.

Duty of insurers to satisfy judgments against insured persons. *See* Rights of third parties against insurers—Duty of insurers to satisfy judgments against insured persons, *post*.

Employer—

Liabilities required to be covered. *See* Compulsory insurance against third party risks—Liabilities required to be covered—Employer, *ante*.

Exception—

Member of the assured's household—

Meaning. **English v Western** [1940] 2 515, CA.

Overloading—

Liability of insurers excluded if 'car conveying load in excess of that for which it was constructed'—Car carrying one person in excess of normal seating accommodation. **Houghton v Trafalgar Insurance Co Ltd** [1953] 2 1409, CA.

Policy excluding 'use for hire or reward other than private hire'—

Supply of car 'direct from garage'—Car used to take owner's fellow workmen home from work—Car taken to place of work hours before. **Lyons v Denscombe** [1949] 1 977, KBD.

Unroadworthiness—

Liability of insurers excluded if car being driven in unsafe or unroadworthy condition—Steering, braking and control of car seriously impaired when being driven at speed by reason of overloading. **Clarke v National Insurance and Guarantee Corp., Ltd** [1963] 3 375, CA.

Extent of cover—

Compulsory insurance against third party risks. *See* Compulsory insurance against third party risks—Extent of cover, *ante*.

False statement to obtain insurance certificate. *See* Certificate—False statement to obtain insurance certificate, *ante*.

Indemnity of authorised driver. *See* Compulsory insurance against third party risks—Person driving with consent of insured—Indemnity of authorised driver, *ante*.

Knock-for-knock agreement—

Claim by insured against other car owner—

Whether claim barred by knock-for-knock agreement. **Morley v Moore** [1936] 2 79, CA.

Learner driver. *See* Compulsory insurance against third party risks—Extent of cover—Learner being taught to drive, *ante*.

Licence obtained by false pretence—

Compulsory insurance against third party risks—

Extent of cover. *See* Compulsory insurance against third party risks—Extent of cover—Driver under age of 16—Licence obtained by false pretence, *ante*.

Misrepresentation of material fact. *See* Rights of third parties against insurers—Duty of insurers to satisfy judgments against insured persons—Insurers not liable where policy obtained by non-disclosure or misrepresentation of material fact, *post*.

Motor vehicle—

Meaning. *See* Using vehicle or causing or permitting vehicle to be used on road without policy being in force—Motor vehicle—Cycle fitted with auxiliary engine, *post*.

Notice of claim. *See* Conditions—Notice of claim, *ante*.

Overloading—

Exception. *See* Exception—Overloading, *ante*.

Passengers carried for hire or reward in private vehicle. *See* Compulsory insurance against third party risks—Passengers carried for hire or reward in private vehicle, *ante*.

Passenger's negligence injuring third party. *See* Using vehicle or causing or permitting vehicle to be used on road without policy being in force—Use—Passenger's negligence injuring third party, *post*.

Payment of hospital expenses. *See* Compulsory insurance against third party risks—Payment + or hospital expenses, *ante*.

Permit—

Meaning. *See* Using vehicle or causing or permitting vehicle to be used on road without policy being in force—Permit, *post*.

Person carried by reason of or in pursuance of a contract of employment. *See* Compulsory insurance against third party risks—Person carried by reason of or in pursuance of a contract of employment, *ante*.

Person driving with consent of insured. *See* Compulsory insurance against third party risks—Person driving with consent of insured, *ante*.

MOTOR INSURANCE (cont)

Repairs to car at request of car owner—

Repairs authorised by insurers—

Agreement by insurers with repairers to pay for repairs—Liability of repairers to owner for failure to carry out repairs within a reasonable time. **Charnock v Liverpool Corpn** [1968] 3 473, CA.

Rights of third parties against insurers—

Duty of insurers to satisfy judgments against insured persons—

Exception—Policy covering only 'Social, domestic and pleasure purposes'—Payment made to insured by passenger in respect of expenses—Policy not covering use for hiring—Insurers not liable—Road Traffic Act 1934, s 10(1). **McCarthy v British Oak Insurance Co Ltd** [1938] 3 1, KBD.

Insurers not liable where policy obtained by non-disclosure or misrepresentation of material fact—Action by insurance company for declaration—Clause negating right to declaration—Declaration based on admissions by insured binding on all parties to action—Road Traffic Act 1934, s 10(3). **Merchants' and Manufacturers' Insurance Co Ltd v Hunt** [1941] 1 123, CA.

Insurers not liable where policy obtained by non-disclosure or misrepresentation of material fact—Action by insurance company for declaration—Notice to third party of matters relied upon—Insurance company subsequently discovering further non-disclosure—Insurance company restricted to matters stated in notice as against third party—Road Traffic Act 1934, s 10(3). **Zurich General Accident and Liability Insurance Co Ltd v Morrison** [1942] 1 529, CA.

Insurers not liable where policy obtained by non-disclosure or misrepresentation of material fact—Declaration under Road Traffic Act 1934, s 10(3)—Meaning of 'policy of insurance' within Road Traffic Act 1930, s 36(4)—Nature of indemnity under Road Traffic Act 1930, s 36(4)—Right to declaration in absence of defendant. **Guardian Assurance Co Ltd v Sutherland** [1939] 2 246, KBD.

Insurers not liable where policy obtained by non-disclosure or misrepresentation of material fact—Misrepresentation in proposal form—Action by insurance company for declaration—Right of third parties to strict proof of falsity of representations—Road Traffic Act 1934, s 10. **Merchants' and Manufacturers' Insurance Co Ltd v Hunt** [1941] 1 123, CA.

Insurers not liable where no notice of proceedings by third party against insured—Sufficiency of casual conversation with agent as notice of proceedings—Road Traffic Act 1934, s 10. **Herbert v Railway Passengers Assurance Co** [1938] 1 650, KBD.

Insurers not liable where no notice of proceedings by third party against insured—Sufficiency of letter to insurers as notice of proceedings—Motor Car Ordinance of Ceylon (No 45 of 1938), s 134(a). **Ceylon Motor Insurance Assn Ltd v Thambugala** [1953] 2 870, PC.

Insurers not liable where no notice of proceedings by third party against insured—Time at which proceedings 'commenced'—Road Traffic Act 1934, s 10(2)(a). **Cross v British Oak Insurance Co Ltd** [1938] 1 383, KBD.

Exception—

Weight or physical characteristics of goods vehicle carries—Use of vehicle in connection with business or profession—Profession stated in policy—Insured also carrying on other business—Physical characteristics of goods carried—Road Traffic Act 1934, s 12(d). **Jones v Welsh Insurance Corpn Ltd** [1937] 4 149, KBD.

Motor Insurers' Bureau—

Adding as defendant—Action by insurers to avoid policy—Notice to third party of matters relied on—Motor Insurers' Bureau—Liability of bureau to satisfy judgment obtained by third party if that judgment not satisfied by insured or insurers—Whether bureau entitled to be joined in insurers' action—Road Traffic Act 1960, s 207(3)—RSC Ord 15, r 6(2)(b). **Fire, Auto and Marine Insurance Co Ltd v Greene** [1964] 2 761, QBD.

Adding as defendant—Whether insurers can be added as parties to running down action where policy does not contain clause giving them conduct of the defence. **Gurtner v Circuit** [1968] 1 328, CA.

Bodily injury suffered by person just within boundary of private land—Motor lorry partly on road—Whether injury caused by, or arising out of, use of vehicle on a road—Road Traffic Act 1960, s 203(3)(a). **Randall v Motor Insurers' Bureau** [1969] 1 21, QBD.

Liability in respect of intentional criminal act—Road Traffic Act 1960, ss 203(3)(a), 207. **Hardy v Motor Insurers' Bureau** [1964] 2 742, CA.

Policy of insurance taken out by employer covering liability for death of any person caused by use of lorry owned by employer—Exclusion of liability in respect of death arising out of and in course of employment of person in employment of insured—Employee killed in accident with lorry—Judgment in favour of widow unsatisfied—Liability of Motor Insurers' Bureau—Road Traffic Act 1930, ss 35(1), 36(b), proviso (i). **Lees v Motor Insurers Bureau** [1952] 2 511, QBD.

Untraced driver—Agreement between Motor Insurers' Bureau and Minister of Transport—Death or injury caused by untraced person—Duty of bureau to award compensation—Discretion of bureau to refuse compensation—Right of appeal to arbitrator against refusal—Applicant suing bureau instead of appealing to arbitrator—Whether claim should be struck out as showing no cause of action—Agreement between Minister of Transport and Motor Insurers' Bureau (21st April 1969), cl 3, 7. **Persson v London Country Buses** [1974] 1 1251, CA.

Rights under statute—

Retrospective operation of statute—Road Traffic Act 1934, s 10. **Croxford v Universal Insurance Co Ltd** [1936] 1 151, CA, **Dolan v Dominion of Canada General Insurance Co** [1936] 2 1354, Assizes.

Risk—

Description of risk—

Loss of car—Car bought from owner on false pretence and for worthless cheque. **Eisinger v General Accident Fire and Life Assurance Corpn Ltd** [1955] 2 897, QBD.

Loss of car—Car sold contrary to owner's authority and proceeds of sale retained. **Webster v General Accident Fire and Life Assurance Corpn Ltd** [1953] 1 663, QBD.

MOTOR INSURANCE (cont)

Risk (cont)—

Duration of risk—

Sale of vehicle—Insured person covered (i) when driving named vehicle and (ii) when driving other vehicles—Condition that insured take all reasonable steps to maintain named vehicle in efficient condition and to allow insurers free access at all times to examine it—Whether second indemnity continued after named vehicle sold—Road Traffic Act 1960, s 201(1). **Boss v Kingston** [1963] 1 177, QBD.

Sale of vehicle—Purported assignment of policy by seller of car—Policy handed to purchaser—Whether person injured by purchaser can recover from insurers. **Peters v General Accident Fire & Life Assurance Corp Ltd** [1938] 2 267, CA.

Roadworthiness. *See* Conditions—Roadworthiness, *ante*.

Sale of vehicle—

Duration of risk. *See* Risk—Duration of risk—Sale of vehicle, *ante*.

Settlement without consulting insured. *See* Conditions—Absolute conduct and control of proceedings—Claim for damages—Settlement without consulting insured, *ante*.

Statutory rights of third parties against insurers. *See* Rights of third parties against insurers—Statutory rights, *ante*.

Temporary cover note—

Using vehicle or causing or permitting vehicle to be used on road without policy being in force. *See* Using vehicle or causing or permitting vehicle to be used on road without policy being in force—Policy of insurance—Temporary cover note, *post*.

Third party risks. *See* Compulsory insurance against third party risks, *ante*.

Using vehicle or causing or permitting vehicle to be used on road without policy being in force—Accused not the driver—

Evidence that occupants of motor vehicle were acting in concert—Sufficiency of evidence—Road Traffic Act 1930, s 35. **Ross v Rivenall** [1959] 2 376, QBD.

Unlicensed driver. *See* Using vehicle or causing or permitting vehicle to be used on road without policy being in force—Vehicle driven by unlicensed driver, *post*.

Unroadworthiness. *See* Exception—Unroadworthiness, *ante*.

Untraced driver—

Injury caused by untraced driver. *See* Rights of third parties against insurers—Motor Insurers' Bureau—Untraced driver, *post*.

Using vehicle on road without policy of insurance being in force. *See* Compulsory insurance against third party—Using vehicle on road without policy of insurance being in force, *ante*.

Using vehicle or causing or permitting vehicle to be used on road without policy being in force—Cause or permit—

Breach of statutory duty—Road Traffic Act 1930, s 35(1). **Watkins v O'Shaughnessy** [1939] 1 385, CA.

Person other than owner of vehicle—Person assisting driver to obtain insurance policy—Policy avoided by reason of misrepresentation in proposal form—Whether person other than owner capable of causing or permitting use of vehicle—Road Traffic Act 1930, s 35(1). **Goodbarne v Buck** [1940] 1 613, CA.

Use of commercial van for private purposes when insured for commercial use only—No evidence of owner's knowledge of such user or of his express permission to driver—Road Traffic Act 1930, s 35(1). **McLeod (or Houston) v Buchanan** [1940] 2 179, HL.

Charge of using motor vehicle and trailer while uninsured—

Wrong description of offence—Charge not amended—Road Traffic Act 1930, s 35(1). **Rogerson v Stephens** [1950] 2 144, KBD.

Extenuating circumstances—

Owner honestly believing himself covered—Dismissal of charge under Probation of Offenders Act 1907, s 1(1)—Road Traffic Act 1930, s 35. **Quelch v Collett** [1948] 1 252, KBD.

In force—

Company's servant driving company's car on authorised journey—Instructing unlicensed person to drive—Whether policy 'in force'—Road Traffic Act 1930, s 35(1). **Mush v Moores** [1949] 2 27, KBD.

Insurance covering the 'proposer or his paid driver' Car driven by paid driver not in general employment of proposer—Whether insurance 'in force'—Road Traffic Act 1930, s 35(1). **Bryan v Forrow** [1950] 1 294, KBD.

Policy covering facts constituting offence against Road Traffic Acts—Use of tractor with two trailers covered—Whether policy 'in force'—Road Traffic Act 1930, s 18(1), s 35(1). **Leggate v Brown** [1950] 2 564, KBD.

Statement by insurance company that it regards itself as 'on risk'—Whether policy 'in force'—Road Traffic Act 1930, s 35(1). **Carnill v Rowland** [1953] 1 486, QBD.

Motor vehicle—

Cycle fitted with auxiliary engine—Use as pedal cycle after removal of essential parts of engine—Whether 'motor vehicle'. **Lawrence v Howlett** [1952] 2 74, QBD.

Cycle fitted with auxiliary engine—Use as pedal cycle—No removal of essential parts of engine—Whether 'motor vehicle'. **Floyd v Bush** [1953] 1 265, QBD.

Permit—

Permission given by person in charge of vehicle, not the owner—Whether owner alone can give permission—Road Traffic Act 1930, s 35(1). **Lloyd v Singleton** [1953] 1 291, QBD.

Person not to use vehicle or cause or permit vehicle to be used—

Any person—Whether persons other than owner of vehicle can be guilty of the offence—Road Traffic Act 1930, s 35(1). **Williamson v O'Keefe** [1947] 1 307, KBD.

Policy of insurance—

Temporary cover note—Effect—Former policy of insurance expired—Car owner intending to change insurers—Cover note issued by former insurers—No renewal premium paid—Cover note having effect as offer by former insurers—Owner not relying on cover note and not having accepted former insurers' offer—Former insurers ready to assume liability on cover note—Whether car owner insured by virtue of the cover note for the purposes of Road Traffic Act 1960, s 201. **Taylor v Allon** [1965] 1 557, QBD.

MOTOR INSURANCE (cont)

Using vehicle or causing or permitting vehicle to be used on road without policy being in force (cont)—

Policy stating vehicle could be driven by any person with policy holder's permission provided not disqualified for holding licence—

Defendant driving with policy holder's permission—Defendant mental defective—Whether 'insured'—Road Traffic Act 1930, s 35(1). **Edwards v Griffiths** [1953] 2 874, QBD.

Use—

Broken down car parked on road outside owner's house—Car not completely immovable, but in such condition that it could not be mechanically propelled—Owner having no intention of driving or moving car at material time—Whether car in use on road—Road Traffic Act 1930, s 35(1). **Elliott v Grey** [1959] 3 733, QBD.

Appellant boy 15 years old not party to original wrongful taking of motor cycle by another boy of same age—Riding on cycle subsequently as pillion passenger—Road Traffic Act 1930, s 35(1). **D (an infant) v Parsons** [1960] 2 493, QBD.

Passenger's negligence injuring third party—Owner not insured against third party liability of passenger—Whether breach of statutory duty to insure against third party risks—Whether there was a 'user' of the vehicle by the passenger within Road Traffic Act 1930, s 35(1). **Brown v Roberts** [1963] 2 263, QBD.

Vehicle driven by unlicensed driver—

Exception if vehicle driven by unlicensed driver—Need for policy to cover driver's liability—Knowledge of owner—Constructive knowledge—Road Traffic Act 1930, s 35(1). **John T Ellis Ltd v Hinds** [1947] 1 337, KBD.

Waiver of breach of condition. *See* Conditions—Breach of condition—Waiver of breach, *ante*.

MOTOR INSURERS

Motor Insurers' Bureau. *See* Rights of third parties against insurers—Motor Insurers' Bureau, *post*.

MOTOR INSURERS' BUREAU

Rights of third parties against insurers. *See* Motor insurance (Rights of third parties against insurers—Motor Insurers' Bureau).

MOTOR TRACTOR

See Road traffic (Motor tractor).

MOTOR VEHICLE

Car—

False trade description—

Indication of previous history including ownership or use—Previous use—Mileage. *See* Trade description (False trade description—Meaning of trade description—Indication of previous history including ownership or use—Previous use—Motor car—Mileage).

Cycle fitted with auxiliary engine. *See* Motor insurance (Using vehicle or causing or permitting vehicle to be used on road without policy being in force—Cycle fitted with auxiliary engine).

False trade description—Defence to proceedings. *See* Trade description (Defence to proceedings—Reasonable precautions and due diligence to avoid commission of offence—Sale of car by motor dealer).

Heavy motor car. *See* Road traffic (Heavy motor car).

Hire-purchase. *See* Hire-purchase (Motor vehicle).

Insurance. *See* Motor insurance.

Latent defect—

Defence to action for negligence. *See* Negligence (Defence—Latent defect—Motor vehicle).

Lien—Repairers' lien. *See* Lien (Repairer's lien—Motor repairer).

Loan, on. *See* Hire-purchase (Refinancing arrangement—Loan desired by borrower on security of car).

Mercantile agent—

Possession of car—

Document of title. *See* Agent (Mercantile agent—Possession of goods—Consent of owner—Document of title—Motor car registration book).

Negligence. *See* Negligence (Vehicles).

New car—

Sale. *See* Sale of goods (Motor car—New car).

Plant—

Investment grant. *See* Investment grant (Machinery and plant—Vehicle).

Road traffic. *See* Road traffic (Motor vehicle).

Sale—

Fitness for purpose—

Implied condition. *See* Sale of goods (Implied condition as to fitness—Particular purpose made known to seller—Vehicle).

Secondhand car—

Sale—

Fitness for purpose. *See* Sale of goods (Implied condition as to fitness—Reasonably fit—Secondhand motor car).

Title—

Private purchaser without notice of hire-purchase agreement. *See* Hire-purchase (Title—Motor vehicle—Private purchaser without notice of hire-purchase agreement under which owner reclaiming vehicle).

Vicarious liability—

See Vicarious liability (Vehicle owner's liability for driver's negligence).

MOTORWAY

Road traffic. *See* Road traffic (Motorway).

MOVEABLE DWELLINGS

Licence. *See* **Housing** (Moveable dwellings—Licence).

MULTIPLE OCCUPATION HOUSES

See **Housing** (House in multiple occupation).

MULTIPLIER

Damages—

Fatal accident. *See* **Fatal accident** (Damages—Multiplier).

MUNICIPAL LAW

International law—

Relationship. *See* **International law** (Municipal law—Relationship).

MURDER

Generally. *See* **Criminal law** (Murder).

MUSIC

Advancement of composer's works—

Trust for—

Whether charitable. 1957 10854 *See* **Charity** (Benefit to community—Music—Advancement of composer's works).

Licence. *See* **Entertainment** (Music and dancing licence).

Training of singer—

Gift to promote training of singers—

Whether charitable purpose. *See* **Charity** (Benefit to community—Music—Training of singers).

Trust for the advancement of composer's works—

Whether charitable. *See* **Charity** (Benefit to community—Music—Advancement of composer's works—Trusts for the advancement of the works of Delius, the testatrix's late husband).

MUSICAL WORK

Copyright. *See* **Copyright** (Musical work).

MUTINY

Royal forces. *See* **Court-Martial** (Mutiny).

MUTUAL MISTAKE

See **Mistake** (Mutual mistake).

MUTUAL WILLS

See **Will** (Mutual wills).

NAME

Change—

Minor's surname. *See* **Minor** (Change of surname).

Company. *See* **Company** (Name).

Fictitious—

Bank account opened in fictitious name. *See* **Criminal law** (Forgery—cheque—Bank account opened in fictitious name).

Name of estate owner—

Registration in incorrect name. *See* **Land charge** (Estate contract—Name of estate owner).

Passing off—

Geographical name. *See* **Passing off** (Geographical name—False trade description).

Name of maker—

Use of own name. *See* **Passing off** (Name of maker).

NAME AND ARMS CLAUSES

Generally. *See* **Will** (Condition).

Will—

Revocation. *See* **Will** (Revocation—Conditional revocation—Name and arms clauses).

NATIONAL ARBITRATION TRIBUNAL

See **Master and servant** (National Arbitration Tribunal).

NATIONAL ASSISTANCE

Bastardy order—

Recovery of expenses. *See* **Recovery of expenses**—Application for bastardy order, *post*.

Board—

Affiliation proceedings by. *See* **Affiliation** (Application for order—Application by National Assistance Board).

Damages for personal injuries—

Whether material assistance taken into account. *See* **Damages** (Personal injury—Loss of future earnings—National assistance).

Recovery of cost of assistance from husband—

Polygamous marriage—

Separation of husband and wife—Polygamous marriage validly entered into according to the law of the spouses' domicile—Wife and children in receipt of national assistance—Whether sums recoverable from husband towards their maintenance—National Assistance Act 1948, ss 42(1)(a), 43(1). **Din v National Assistance Board** [1967] 1 750, QBD.

Separation of husband and wife—

Assistance granted to wife—Proceedings to recover sums from husband—Whether separation agreement a defence. **Stopher v National Assistance Board, National Assistance Board v Parkes** [1955] 1 700, QBD.

NATIONAL ASSISTANCE (cont)

Recovery of cost of assistance from husband (cont)—

Separation of husband and wife (cont)—

Deed of separation—Grant of national assistance to wife—Liability of husband to National Assistance Board—National Assistance Act 1948, ss 42(1)(a), 43(2). **National Assistance Board v Prisk** [1954] 1 400, QBD.

Deed of separation—Grant of national assistance to wife—Wife's covenant under deed not to claim any financial provision from husband—Liability of husband to National Assistance Board—National Assistance Act 1948, ss 42(1)(a), 43(1)(2). **National Assistance Board v Parkes** [1955] 3 1, CA.

No agreement and no misconduct—Difference between remedy of National Assistance Board for recovering cost of assistance and liability of husband for wilful neglect to maintain—National Assistance Act 1948, ss 42, 43—Summary Jurisdiction (Married Women) Act 1895, s 4. **Lilley v Lilley** [1959] 3 283, CA.

Wife deserting husband—

National assistance given to wife—Liability of husband to National Assistance Board—National Assistance Act 1948, s 42(1)(a). **National Assistance Board (by J R Beattie) v Wilkinson** [1952] 2 255, QBD.

Recovery of expenses—

Application for bastardy order—

Right of National Assistance Board to apply—National Assistance Act 1948 s 44(2)(3). **National Assistance Board v Mitchell** [1955] 3 291, QBD.

Right of National Assistance Board to apply—Whether proof necessary that mother a single woman—National Assistance Act 1948, s 44(2). **National Assistance Board v Tugby** [1957] 1 509, QBD.

NATIONAL DEFENCE CONTRIBUTION

Computation of profits—

Chargeable accounting period—

Underwriting agents—Commission not ascertainable and not payable until two years after underwriting of risk—When earned—Finance Act 1937, ss 19, 20 Sch IV, para 1. **Gardner, Mountain and D'Ambrumenil Ltd v Inland Revenue Comrs** [1947] 1 650, HL.

Deductions in computing profits—

Payments made by company to retiring directors—Payments made in consideration of covenants in restraint of trade—Whether payments capital or revenue expenditure—Finance Act 1937, Sch IV. **Associated Portland Cement Manufacturers Ltd v Kerr (Inspector of Taxes)** [1946] 1 68, CA.

Repairs to premises—Premises kept open for business during rehabilitation work—Increased cost of work. **Mann, Crossman & Paulin Ltd v Compton (Inspector of Taxes)** [1947] 1 742, KBD.

Income received from investments or other property—

Bank interest on current account—Whether excluded from computation—Finance Act 1937, sched IV, para 7. **Inland Revenue Comrs v Imperial Tobacco Co (of Great Britain and Ireland) Ltd** [1940] 3 248, KBD.

Income received by way of dividend from another company in which company having controlling interest—Controlling interest in company—Whether including indirect control—Finance Act 1937, Sch IV, paras 4, 7(b), 11. **British American Tobacco Co Ltd v Inland Revenue Comrs** [1943] 1 13, HL. **Inland Revenue Comrs v F A Clark & Son Ltd** [1941] 2 651, CA.

Income received indirectly by way of dividend—Dividends received by British company from American company which held shares in British companies—Whether income received 'indirectly' from a company liable to be assessed to national defence contribution—Finance Act 1937, Sch IV para 7(a)(1). **Selection Trust Ltd v Devitt (Inspector of Taxes) and Inland Revenue Comrs** [1943] 2 727, KBD.

Royalties in respect of licence to manufacture patented aluminium alloy—Deduction of cost of alloy purchased—Finance Act 1937, Sch IV, para 7. **Inland Revenue Comrs v Rolls-Royce Ltd** [1942] 1 196, KBD.

NATIONAL HEALTH INSURANCE

Approved society—

Power to institute proceedings on behalf of member—

Accident to member of approved society—Proceedings not instituted by society—Whether duty of committee to institute proceedings on behalf of member—Whether society liable for failure to institute proceedings. **Butler v Alcock** [1941] 3 411, CA.

Dental benefit. *See* Medical and dental benefit, *post*.

Employment—

Persons in employment within statutory meaning—

Canvasser—Payment of fixed sum weekly for expenses—Remuneration by payment of value of first order from new customers—Whether employment within meaning of National Health Insurance Act 1936—National Health Insurance Act 1936, Sch I. **Appeal of Belcher, Re Essex Flour & Grain Co Ltd** [1938] 3 244, KBD.

Employment by reference to contract of bailment—Bailee of motor car used for plying for hire—Whether in 'employment' of bailor—National Health Insurance Act 1936, s 161, Sch I, Part I, cl (e). **Appeal of Thompson, Re A Johnson (Hove) Ltd** [1939] 4 277, KBD.

Lavatory attendant working two shifts a week—Whether employed as relief employee—National Health Insurance Act 1936, Sch I, Part II—National Health Insurance (Subsidiary Employments) Order 1932, (S R & O 1932 No 501). **Appeal of Mackley** [1943] 2 19, KBD.

Statutory definition—

Persons in employment within statutory meaning—Sub-postmaster—Remuneration by scale payment—Whether compulsorily insurable—National Health Insurance Act 1936, Sch I. **Appeal of Roberts, Re Postmaster-General** [1939] 4 269, KBD.

NATIONAL HEALTH INSURANCE (cont)

Exemption—

Person employed in military service of Crown—

Territorial officer—Whether exempt. *Re Cousins* [1938] 1 17, KBD.

Remuneration in excess of prescribed amount—

Calculation of remuneration—Unpaid assistance of employee's wife—Whether value of such assistance may be deducted from remuneration—National Health Insurance Act 1936, s 161, Sch I, Part II, cl (k). *Appeal of Sherwood, Re G F & A Brown & Sons Ltd* [1939] 4 291, KBD.

Failure to insure—

Breach of statutory duty—

Civil proceedings—Whether breach actionable at common law—National Health Insurance Act 1936, ss 1, 174(1). *Chadwick v Pioneer Private Telephone Co Ltd* [1941] 1 522, Assizes.

Insured person—

Proof that insured person available for but unable to obtain employment—

Franking of contribution card at labour exchange—Conclusive evidence of genuine unemployment—National Health Insurance Act 1924, s 3(3)(a), (b)—National Health Insurance Act 1928, s 1(3)—National Health Insurance (Arrears) Regulations 1930, (S R & O 1930 No 187)—Circular A S 267. *Donovan v National Amalgamated Approved Society* [1939] 2 718, KBD Divl Ct.

Medical and dental benefit—

Dental benefit—

Right of dentist to recover payment under statutory scheme—Dental treatment given to member of approved society by medical practitioner not on dentists' register—Whether dentist entitled to payment by approved society—Dentists Act 1921, s 1(3)(a)—Dental Benefit Regulations 1930, (S R & O 1930 No 1060), regs 2, 21(1). *Bynoe v General Federation of Trades Unions Approved Society* (110) [1937] 4 184, CA.

NATIONAL HEALTH SERVICE

Act done in pursuance of public duty or authority—

Limitation of action. *See* Public authority (Limitation of action).

Board of governors—

Hospital. *See* Hospital—Board of governors, *post*.

Compensation to medical practitioner for loss of right to sell practice. *See* Medical practitioner—

Compensation for loss of right to sell practice, *post*.

Consultant—

Remuneration—

Reports on candidates for Royal Ulster Constabulary—Examination of X-ray photographs of chests with a view to the prevention of tuberculosis in the constabulary—Duty assigned to whole-time consultant in tuberculosis and chest diseases employed under health service—Whether consultant entitled to remuneration in addition to fixed salary—National Health Service Terms and Conditions of Service of Hospital Medical and Dental Staff (England and Wales), dated 7th June 1949, para 14—Public Health (Tuberculosis) Act (Northern Ireland) 1946, s 2. *Northern Ireland Hospitals Authority v Whyte* [1963] 3 343, HL.

Consultants and specialists—

Position. *See* Specialist services—Duty of minister to provide treatment by means of service of specialists—Position of consultants and specialists, *post*.

Drug—

Supply of medicine or drug. *See* Pharmaceutical services—Supply of medicine or drug, *post*.

Gift—

Legacy to hospital—

Diversion of gift. *See* Legacy to hospital—Diversion of gift, *post*.

Hospital—

Board of governors—

Occupation of property—Whether board of governors occupy premises of teaching hospital—National Health Service Act 1946, s 12(3). *Hills (Patients) Ltd v Board of Governors of University College Hospital* [1955] 3 365, CA.

Endowment of bed—

Absence of recognised amount and scheme—Acceptance by governors of sum subject to conditions of will. *Re Mills (decd)* [1953] 1 835, ChD.

Institution for the reception and treatment of persons—

Clinic maintained in connection with any such institution—Clinic maintained for treatment of out-patients—Not confined to ex-patients of any particular hospital—Whether a 'hospital'—National Health Service Act 1946, s 79(1). *Re Couchman's Will Trusts* [1952] 1 439, ChD.

Treatment—Home for incurables—Whether a 'hospital'—National Health Service Act 1946, ss 6(1), s 79(1). *Minister of Health v Royal Midland Counties Home for Incurables, Leamington Spa, General Committee* [1954] 1 1013, CA.

Legacy. *See* Legacy to hospital, *post*.

Protection of members and officers against liability in respect of acts done in pursuance of statute—

Scope of protection—Whether hospital group management committee liable for negligence of one of its servants—National Health Service Act 1946, s 72. *Bullard v Croydon Hospital Group Management Committee* [1953] 1 596, QBD.

Staff—

Continuance of employment of consultant after nationalisation—Contract subject to terms and conditions of service issued by Minister—Termination of employment by regional hospital board—Non-compliance with clause of terms of service for reference to Minister before termination of employment—Remedies—Measure of damages—Declaration—Discretionary remedy—Breach of contract of employment—Breach of statutory duty under National Health Service Act 1946, ss 12, 14, 68. *Barber v Manchester Regional Hospital Board* [1958] 1 322, QBD.

NATIONAL HEALTH SERVICE (cont)

Hospital (cont)—

Staff (cont)—

Terms and conditions of service—Dismissal—Hospital medical and dental staff—Representations against dismissal—Member of staff considering that employment being unfairly terminated—Terminated—Medical assistant—Appointment for two year period renewable, subject to confirmation, indefinitely—Medical assistant's appointment not confirmed—Whether appointment being 'terminated'—Terms and Conditions of Service of Hospital Medical and Dental Staff (England and Wales) and Administrative Medical Staff of Regional Hospital Boards (England and Wales) (January 1971), para 190. **R v Secretary of State for Social Services, ex parte Khan** [1973] 2 104, CA.

Vesting in Minister of Health—

Effect—Charity—Whether hospital remaining a charity—National Health Service Act 1946, s 59(1)(2). **Re Frere (decd)** [1950] 2 513, ChD.

Legacy to hospital—

Continuance of work of hospital after National Health Service Act 1946—

Payment of legacy to body administering hospital under Act. **Re Meyers (decd)** [1951] 1 538, ChD.

Destruction of object—

Vesting of hospital in Minister of Health after date of will but before death of testator—National Health Service Act 1946, s 6. **Re Morgan's Will Trusts** [1950] 1 1097, ChD, **Re Glass' Will Trusts** [1950] 2 953, ChD.

Vesting of hospital in Minister of Health after death of testator but before legacy paid over. **Re Hunter (decd)** [1951] 1 58, ChD.

Division of gift—

Discretion to trustees to direct gift of impracticable or inequitable in consequence of amalgamation—Effect of National Health Service Act 1946. **Re Hayes' Will Trusts** [1953] 2 1242 ChD.

Discretion to trustees to divert gift if hospital becomes amalgamated or absorbed—National Health Service Act 1946, ss 11(8), 60(1). **Re Bawden's Settlement** [1953] 2 1235, ChD.

Gift of half share of residue of testator's estate to twelve named charities—

Proviso that if any of the charities ceased to exist as an independent charity fund to be divided among charities then in existence—Three of charities became subject to National Health Service Act 1946—Whether they ceased thereby to exist as independent charities. **Re Lowry's Will Trusts** [1966] 3 955, ChD.

Gift of residue—

Gift 'to the trustees for the time being' of the hospital 'and by them to be appropriated for or towards the building funds' of the hospital—Vesting of hospital and endowment funds in Minister of Health after date of will, but before death of testatrix—National Health Service Act 1946, ss 6, 7(4). **Re Little (decd)** [1953] 2 852, ChD.

Gift of share of residue—

Estate fully administered—Right to require transfer of funds—National Health Service Act 1946, ss 60(1), 79(1). **Re Gartside** [1949] 2 546, Ch Ct, County Palatine of Lancaster.

Gift 'to any three hospitals in Devon which are most in need of it'—'Need' of hospitals vested in Minister of Health—National Health Service Act 1946, s 54(1)(2). **Re Perreyman (decd)** [1953] 1 223, ChD.

Gift of share of residue to teaching hospital—

Gift to lapse if the funds should have come under 'government control'—National Health Service Act 1946, s 7(1)(2). **Re Buzzacott (decd)** [1952] 2 1011, ChD.

Institution taken over by State between death of testatrix and grant of probate—Disposition of gifts—Provisions for arbitration—Rights to which any governing body were entitled immediately before the appointed day—'Endowment' of hospital—Application of trust property in making payments to board of governors—National Health Service Act 1946, ss 6(1), 7(1)(10), 60(1)(a), 78(1)(c)—National Health Service (Apportionment and Transfer) Regulations 1948 (S I 1948 No 888), reg 30. **Re Kellner's Will Trusts** [1949] 2 774, CA.

Gift to hospital 'if not taken over by the State'—

Residuary gift to same hospital—Effect of condition on residuary gift. **Re Frere (decd)** [1950] 2 513, ChD.

Gift to medical school of hospital—

Gift over if hospital nationalised or passes into public ownership—Medical school not nationalised. **Royal College of Surgeons of England v National Provincial Bank Ltd** [1952] 1 984, HL.

Gift over if hospital nationalised or passes into public ownership—Whether gift over takes effect consequent on National Health Service Act—National Health Service Act 1946, ss 6(1), 8(1), 15(1). **Re Bland-Sutton's Will Trusts** [1951] 1 494, CA.

'Specific purpose of hospital'—

Payment to board of governors—Gift to infirmary 'for the purposes of a home of rest for the nurses'—National Health Service Act 1946, s 60(1)(2). **Re White's Will Trusts** [1951] 1 528, ChD.

Medical practitioner—

Compensation for loss of right to sell practice—

Assessment—Calculated by reference to the last two accounting years immediately preceding the appointed day—Powers of arbitrator—National Health Service Act 1946, s 36(1)—National Health Service (Medical Practices Compensation) Regulations 1948 (S I 1948 No 1506), reg 7(2)(a). **Carter v Minister of Health** [1950] 1 904, KBD.

Assessment—Calculated by reference to the last two accounting years immediately preceding the appointed day—National Health Service Act 1946, s 36(1)—National Health Service (Medical Practices Compensation) Regulations 1948 (S I 1948 No 1506), reg 2(1), reg 7(2). **R v Minister of Health, ex parte Dingle** [1950] 1 875, KBD.

NATIONAL HEALTH SERVICE (cont)

Medical practitioner (cont)—

Failure to comply with terms of service—

Recommendation by executive council to Minister of Health to withhold sum from practitioner's remuneration—Purported appeal by complainant to Minister on quantum of penalty—Application by practitioner for order of prohibition against proceeding with appeal—Implicit that appeal lay only against adverse decisions—National Health Service Act 1946, s 33—National Health Service (Service Committees and Tribunal) Regulations 1956 (S I 1956 No 1077), reg 7 (as amended by National Health Service (Service Committees and Tribunal) Amendment Regulations 1965 (S I 1965 No 1366)). **R v Minister of Health, ex parte Ellis** [1967] 3 65, QBD.

Partnership—

Goodwill—Clause in partnership agreement prohibiting retiring partner from carrying on practice within ten-mile radius—Validity—National Health Service Act 1946, s 35(1)—National Health Service (Amendment) Act 1949, s 1(1). **Whitehill v Bradford** [1952] 1 115, CA.

Medical school of hospital—

Gift—

Gift over if hospital nationalised or passes into public ownership. *See* Legacy to hospital—Gift to medical school of hospital—Gift over if hospital nationalised or passes into public ownership, *ante*.

Medicine—

Supply of medicine or drug. *See* Pharmaceutical services—supply of medicine or drug, *post*.

Minister of Health—

Hospital vesting in—

Effect. *See* Hospital—Vesting in Minister of Health—Effect, *ante*.

Officer—

Compensation for loss of employment—

Factors to be considered—Application by clerk to hospital board—Also clerk to local authority—Consideration of service with local authority—National Health Service (Transfer of Officers and Compensation) Regulations 1948 (S I 1948 No 1475), reg 2. **R v Northumberland Compensation Appeal Tribunal, ex parte Shaw** [1952] 1 122, CA.

Ophthalmic services—

Ophthalmic optician—

Qualification—Advisory committee—Duties and powers—Scope and method of investigation—National Health Service (Executive Council) Regulations 1947 (S R & O 1947 No 889), reg 19(2). **R v Central Professional Committee for Opticians, ex parte Brown** [1949] 2 519, KBD.

Patented drug. *See* Pharmaceutical services—Supply of medicine or drug—Patented drug, *post*.

Pharmaceutical services—

Supply of medicine or drug—

Contractual relationship between chemist and National Health Service Executive Council that of contract for services—Supply of drug by chemist against a prescription—Whether a sale to executive council—Sliver of glass in bottle of medicine—Whether offence of selling drug out of the nature, etc demanded—National Health Service Act 1946, s 38—National Health Service (General Medical and Pharmaceutical Services) Regulations 1966 (S I 1966 No 1210), reg 23, Sch 4, Part 1—Food and Drugs Act 1955, s 2(1). **Appleby v Sleep** [1968] 2 265, QBD.

Patented drug—Drug supplied to hospital out-patients and prescribed charges made—Whether sale of drug to patient—National Health Service Act 1946, s 5. **Pfizer Corp'n v Ministry of Health** [1965] 1 450, HL.

Remuneration—

Consultant. *See* Consultant—Remuneration, *ante*.

Specialist services—

Duty of Minister to provide treatment by means of service of specialists—

Position of consultants and specialists—National Health Service Act 1946, s 3(1)(c). **Razzell v Snowball** [1954] 3 429, CA.

Staff. *See* Hospital—Staff, *ante*.

Superannuation of officers—

Determination of questions by Minister of Health—

Mental health officer—Shoemaker employed in mental hospital—Periodically in charge of working patients—Finality of determination of status by Minister—National Health Service Act 1946, s 67(1)(i)—National Health Service (Superannuation) Regulations 1950 (S I 1950 No 497), regs 1(3), 60. **Healey v Ministry of Health** [1954] 3 449, CA.

Terms and conditions of service—

Hospital staff. *See* Hospital—Staff—Terms and conditions of service, *ante*.

Transfer of hospital to Minister—

All hospitals vested in local authority—

All hospitals—National Health Service Act 1946, s 6(2). **Ministry of Health v Stafford Corp'n** [1952] 2 386, CA.

Vested—Two local authorities respectively owning freehold and leasehold interests in hospital premises—Whether freehold interest vesting in Minister—National Health Service Act 1946, s 6(2). **Ministry of Health v Stafford Corp'n** [1952] 2 386, CA.

Interests in voluntary hospitals—

Interest held by trustees solely for the purposes of that hospital—Power of trustees to sell property and apply proceeds of sale to other charitable purposes—National Health Service Act 1946, s 6(1). **Re Marjoribanks' Indenture** [1952] 1 191, CA.

Interest held by trustees solely for the purpose of that hospital—Transfer of property and endowment—Power of trustees to divert property and endowment to other charitable purposes—National Health Service Act 1946, ss 6(1), 7(4). **Ministry of Health v Fox** [1950] 1 1050, ChD.

NATIONAL HEALTH SERVICE (cont)

Transfer of hospital to Minister (cont)—

Interests in voluntary hospitals (cont)—

'Interest held by trustees solely for the purposes of that hospital'—Trustees having liberty to pay or apply income of fund to or for a hospital until further order of court—National Health Service Act 1946, s 7(4) (10). **Re Galloway (decd)** [1952] 1 1379, Ch Ct, County Palatine of Lancaster.

NATIONAL INDUSTRIAL RELATIONS COURT

Contempt of court—

Breach of injunction—

Evidence of contempt. *See* **Contempt of court** (Committal—Breach of injunction—Evidence of contempt—National Industrial Relations Court).

See **Industrial relations** (National Industrial Relations Court).

Precedent—

Decisions binding on court. *See* **Precedent** (National Industrial Relations Court).

NATIONAL INSURANCE

Absence abroad—

Contributions. *See* **Employed person—Absence abroad—Payment of contributions in respect of periods abroad, post.**

Appeal—

Decision of Minister—

Employed person—Determination that employee engaged under contract of service—Appeal on question of law to High Court—Question whether person engaged under contract of service or for services mixed question of law and fact—Grounds on which court may interfere with Minister's decision—Driver engaged by company to drive earth moving machines—Features of contract with company pointing both to contract of service and contract for services—Decision of Minister one on which person properly instructed in relevant law could have come—Evidence to support decision—Decision containing no *ex facie* false proposition of law—No error of law established on appeal—National Insurance Act 1965, ss 1(2)(a), 65. **Global Plant Ltd v Secretary of State for Health and Social Security** [1971] 3 385, QBD.

Arrears of contributions—

Recovery—

Agreement by employer to pay contributions—Action by employee to recover wages from employer—Whether arrears of contributions part of employee's wages. **The Gee-Whiz** [1951] 1 876, Adm.

Arrears payable under National Health Insurance Act 1936—Debt due to Crown—Whether assets of National Insurance Fund—National Insurance Act 1946, s 54(1), s 66(1)(a). **Ministry of National Insurance v Barrs** [1951] 1 532, CA.

Conviction for failing to pay contributions—Liability on conviction to pay amount equal to unpaid contributions—Order for payment by court on conviction—Power to recover sums by civil proceedings—Whether court which enters conviction bound to make order for payment—National Insurance Act 1965, s 95(1), (3), (9). **Morgan v Quality Tools & Engineering (Stourbridge) Ltd** [1972] 1 744, QBD.

Order for payment of arrears—Fine imposed—Whether sum enforceable as a civil debt or purpose of fixing maximum period of committal in default of payment—National Insurance Act 1946, s 54(1)—Magistrates' Courts Act 1952, s 64(3), Sch 3, para 4—National Insurance (Contributions) Regulations 1948 (S 1 1948 No 1417), reg 19(5). **R v Marlow (Bucks) Justices, ex parte Schiller** [1957] 2 783, QBD.

Recoverable as a penalty—National Insurance Act 1946, s 8—National Insurance (Contributions) Regulations 1948 (S 1 1948 No 1417), reg 19(1), (3), (5). **Shilvock v Booth** [1956] 1 382, QBD.

Recoverable as a penalty—Whether a penalty—Whether magistrates' court has jurisdiction to remit arrears—National Insurance Act 1946, s 8—National Insurance (Contributions) Regulations 1948 (S 1 1948 No 1417), reg 19(5)—Magistrates' Courts Act 1952, s 27(1), s 126(1), (3). **Leach v Litchfield** [1960] 3 739, QBD.

Recovery following prosecution—Payment to National Insurance and Industrial Injuries Funds—Liability of directors in event of company failing to pay—Liability of person ceasing to be director before order for payment made but after period in which contributions should have been paid—National Insurance Act 1965, ss 8(2), 95(8). **Department of Health and Social Security v Wayne** [1972] 1 255, CA.

Attendance allowance—

Entitlement—

Person requiring prolonged or repeated attendance during the night—Meaning of 'night'—Sunrise and sunset irrelevant—Domestic routine of household relevant fact—Period of inactivity beginning with time when household closes down for night—National Insurance (Old Persons' and Widows' Pension and Attendance Allowance) Act 1970, s 4(2). **R v National Insurance Comr, ex parte Secretary of State for Social Services** [1974] 3 522, QBD.

Benefit—

Disqualification—

Persons undergoing penal servitude, imprisonment or detention in legal custody—Convicted persons detained as of unsound mind and as mental defectives—Whether 'detention in legal custody'—National Insurance Act 1946, s 29(1)(b)—Criminal Justice Act 1948, s 66. **R v National Insurance Comr, ex parte Timmis, R v Same, ex parte Cox, R v Same, ex parte James** [1954] 3 292, QBD.

NATIONAL INSURANCE (cont)

Benefit (cont)—

Earnings-related supplement—

Reckonable earnings—Emoluments assessable to income tax under Sch E from which tax is deductible—Casual employments in addition to regular employment—Tax deduction by casual employers impracticable—Effect on earnings-related supplementary benefit—Income Tax Act 1952, s 157—Income Tax (Employments) Regulations 1965 (S I 1965 No 516), reg 51(1)—National Insurance Act 1965, s 4(2)—National Insurance Act 1966, s 2(1), (5)(b). **Baker v Minister of Social Security** [1969] 2 836, QBD.

Obtaining benefit by false statement etc—

Meaning of benefit—National Insurance Act 1965, s 93(1)(c). **Tolfree v Florence** [1971] 1 125, QBD.

Contract of service. *See* Employed person—Contract of service, *post*.

Contributions—

Agreement by employer to pay. *See* **Master and servant** (Remuneration—National insurance contributions).

Arrears. *See* Arrears of contributions, *ante*.

Employer's contributions—

Liability to pay—No services rendered by employee in contribution week—Employee incapable of work and would but for that incapacity have been working—Incapable of work—Employer a football club—Employee a professional footballer—Employee incapable of playing football in consequence of injury—Employee capable of doing other work—Whether employer liable to pay contributions where employee incapable of following his regular occupation—National Insurance Act 1965, s 8(5)—National Insurance (Industrial Injuries) Act 1965, s 3(2)(b). **Chesterfield Football Club Ltd v Secretary of State for Social Services** [1973] 1 679, QBD.

Exemption from liability to pay contributions—

Persons not in receipt of income exceeding prescribed amount—Meaning of 'income'—National Insurance Act 1946, s 5(1)(a)(iii). **Longsdon v Minister of Pensions and National Insurance** [1956] 1 83, QBD.

Minister's decision conclusive and mandatory on questions involving payment of contributions under the Acts—

Ouster of the court's jurisdiction—National Insurance Act 1965, ss 64(1)(a) and 97(1) (2)—National Insurance (Industrial Injuries) Act 1965, ss 35(1)(c), 70 (1) (2). **Department of Health and Social Security v Walker Dean Walker Ltd** [1970] 1 757, QBD.

Whether to be taken into account in assessing damages for personal injuries. *See* **Damages** (Personal injury—Loss of future earnings—National insurance contributions).

Determination of claims and questions—

Determination of question whether persons employed or self-employed—

Jurisdiction—Reference by court for determination by Minister—National Insurance Act 1965, ss 64(1)(a), (c), 97(2)—National Insurance (Industrial Injuries) Act 1965, ss 35(1), 70(2). **Ministry of Social Security v John Bryant & Co (Bristol) Ltd** [1968] 3 175, QBD.

Finality of decision of National Insurance Commissioner—

Determination in law on construction of enactment—Findings of fact—Claim to unemployment benefit—Whether originating summons to High Court lies to determine whether commissioner's decision bad in law—Commissioner's findings of fact final—National Insurance Act 1946, s 13(1), proviso (a), s 43(1). **Punton v Ministry of Pensions and National Insurance** [1963] 1 275, CA.

Jurisdiction of High Court on originating summons to determine whether commissioner's decision wrong in law—Exercise of court's discretion—Unemployment benefit—National Insurance Act 1946, s 43(1)—RSC Ord 54A, rr 1A, 4—National Insurance (Claims and Payments) Regulations 1948 (S I 1948 No 1041), reg 9—National Insurance (Determination of Claims and Questions) Regulations 1948 (S I 1948 No 1144), regs 10, 11, 15, 19—Tribunals and Inquiries Act 1958, s 11(1). **Punton v Ministry of Pensions and National Insurance** (No 2) [1964] 1 448, CA.

Disablement benefit—

Industrial injury. *See* **Industrial injury** (Disablement benefit).

See **Industrial injury** (Disablement benefit).

Disqualification from benefit. *See* Benefit—Disqualification, *ante*.

Earnings-related supplement. *See* Benefit—Earnings-related supplement, *ante*.

Employed person—

Absent abroad—

Payment of contributions in respect of periods abroad—Employment outside Great Britain—Employment in continuation of employed contributor's employment in Great Britain—'In continuation of'—Period of non-employment intervening between termination of employment in Great Britain and subsequent employment outside Great Britain—Whether subsequent employment must be continuous in point of time with employment in Great Britain—National Insurance (Residence and Persons Abroad) Regulations 1948 (S I 1948 No 1275), reg 3(1). **East African Airways Corp v Secretary of State for Social Services** [1973] 1 165, QBD.

Contract of service—

Employments to be treated as employment under contract of service—Employment where dental practitioner remunerated by salary—Dentist employed by local authority—Employment for indefinite period until terminated by notice—Attendance obligatory on fixed number of occasions per week—Payment at fixed rate for each session worked—Whether dentist in receipt of salary or fees—National Insurance (Classification) Regulations 1948 (S I 1948 No 1425), Sch 1, Part 1, para 2(b)—National Insurance (Industrial Injuries) (Insurable and Excepted Employments) Regulations 1948 (S I 1948 No 1456), Sch 2, Part 1, para 2(b). **Greater London Council v Minister of Social Security** [1971] 2 285, QBD.

Music-hall artist—Whether employed under 'contract of service'—National Insurance Act 1946, s 1(2)(a), (b). **Gould v Minister of National Insurance** [1951] 1 368, KBD.

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Part-time teacher at drama school—Payment by the hour or fixed fee—Absences to undertake occasional theatrical engagements—No syllabus imposed by school—No administrative duties—Whether contract of service—National Insurance Act 1965, s 1(2)(a). **Argent v Minister of Social Security** [1968] 3 208, QBD.

Series of contracts of employment—Interviewer working for market research company—Extent and degree of control—Nature and provisions of contracts—Whether contract of service or for services—National Insurance Act 1965, s 1(2)—National Insurance (Industrial Injuries) Act 1965, s 1(2), Sch 1, Pt 1, para 1. **Market Investigations Ltd v Minister of Social Security** [1968] 3 732, QBD.

Person gainfully occupied in employment under contract of service—

Gainfully occupied—Research assistant incapacitated by poliomyelitis—Cost of travelling to and from work exceeding remuneration—Whether 'gainfully occupied in employment'—National Insurance Act 1946, s 1(2)(a),(b). **Vandyk v Minister of Pensions and National Insurance** [1954] 2 723, QBD.

Solicitor's articled clerk—Articles in usual form, not providing for any remuneration—£100 given to clerk, in one year, in four equal payments—Clerk told to spend the money on holidays—Whether 'gainfully occupied in employment under a contract of service'—National Insurance Act 1946, s 1(2)(a). **Benjamin v Minister of Pensions and National Insurance** [1960] 2 851, QBD.

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Family allowance. *See* Family Allowance.

Industrial injuries. *See* Industrial injury.

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Exception—Inspector having no power to enter private dwelling-house not used for trade or business—Burden of proof—Inspector attempting to enter premises built as dwelling-house and once used as such—Accused refusing to allow inspector to enter premises—Accused relying on exception—Onus on accused to prove premises within exception—Magistrates' Courts Act 1952, s 81—National Insurance Act 1965, s 90. **Stott v Hefferon** [1974] 3 673, QBD.

Exception—Inspector having no power to enter private dwelling-house not used for trade or business—Meaning of 'private dwelling-house'—Premises built as dwelling-house but no longer used as such—Whether 'private dwelling-house'—National Insurance Act 1965, s 90. **Stott v Hefferon** [1974] 3 673, QBD.

Power to require information for the purpose of ascertaining whether contributions payable—

Employed person—Failure of employer to pay contributions—Refusal of employee to furnish information to inspector—Whether inspector having power to require employee to disclose name and address of employer—National Insurance Act 1965, s 90(3)(4). **Smith v Hawkins** [1972] 1 910, QBD.

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Music-hall artist. *See* Employed person—Contract of service—Music-hall artist, *ante*.

Offence—

Institution of proceedings—

Authorisation—Institution of proceedings by or with the consent of the Minister or by an inspector or other officer authorised in that behalf—Whether prosecution have to prove authorisation—National Insurance Act 1946, s 53(1). **Price v Humphries** [1958] 2 725, QBD.

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Lawful excuse—Purchase in good faith from person not authorised to sell—Post Office Act 1908, s 65(1)(b)(as applied by the National Insurance and Industrial Injuries (Stamps) Regulations 1948 (S.I. 1948 No 1443), reg 1. **Winkle v Wiltshire** [1951] 1 479, KBD.

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Disqualification of persons losing employment because of stoppage of work due to trade dispute—

Exception—Persons not directly interested in dispute—Not belonging to grade or class of workers any of whom directly interested in dispute—National Insurance Act 1946, s 13(1), proviso (a), proviso(b). **Punton v Ministry of Pensions and National Insurance (No 2)** [1964] 1 448, CA.

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NATIONAL SAVINGS

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National development bonds—

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Reference to Chief Registrar of Friendly Societies—Bank having equitable charge over customer's holding of bonds, and an application for encashment signed by customer, as security for her overdraft—On failure to discharge overdraft bank applying to Director of Savings to encash bonds—Customer countermanning encashment order—Whether 'dispute' between Director of Savings and bank—Whether bank person 'claiming to be entitled' to the bonds—National Debt Act 1958, s 4(1). **R v Chief Registrar of Friendly Societies, ex parte Mills** [1970] 3 1076, QBD.

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NATIONAL SERVICE

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Ordinarily resident in Great Britain—Exception—Residence for temporary purpose—Residence in Great Britain for more than two years—Citizen of Republic of Ireland—Domicil in Ireland and intention to return thereto—Whether liable to be called up—National Service Act 1948, s 34(4)(b)(c)—British Nationality Act 1948 s 3(2)—Ireland Act 1949, ss 3(1)(a)(i), 3(2)(a). **Bicknell v Brosnan** [1953] 1 1126, QBD.

Person domiciled in Eire—Whether subject to be called up for service—British Nationality and Status of Aliens Act 1914, s 1(1)(a)—Irish Free State (Agreement) Act 1922—Irish Free State Constitution Act 1922—Eire (Confirmation of (Agreements) Act 1938—National Service (Armed Forces) Act 1939, s 1. **Murray v Parkes** [1942] 1 558, KBD.

Deferment—

False statement—Liability of secretary of company—National Service (Armed Forces) Act 1939, s 16(a). **Dellow v Busby** [1942] 2 439, KBD.

Conscientious objector—

Registration—

Failure to comply with condition of registration—Reasonable excuse—Exemption from requirement to register—Minister of religious denomination—Claim to exemption not proceeded with at time of registration—As registered conscientious objector minister bound to comply with condition—National Service (Armed Forces) Act 1939, ss 5(6)(b), 11(1)(e)—National Service Act 1941. **Emery v Sage** [1943] 1 509, KBD.

Exemption from national service—

Regular minister of religious denomination—

Jehovah's Witnesses—Whether regular minister of a religious denomination—National Service Act 1948, Sch In para 2. **Walsh v Lord Advocate** [1956] 3 129, HL.

Medical examination—

Notice requiring person to submit to medical examination—

Failure to comply with notice—Conscientious objector—Refusal to undergo medical examination—Punishment—Probation—Jurisdiction to deal with offence under Probation of Offenders Act 1907—National Service (Armed Forces) Act 1939, ss 4, 5. **Eversfield v Story** [1942] 1 268, KBD.

Reinstatement in civil employment—

Decision of umpire—

Dissatisfaction of employer—Certiorari—Reinstatement in Civil Employment Act 1944, ss 1(1), 9(1)(2), 10(1)(2). **R v Ludlow, ex parte Barnsley Corpn** [1947] 1 880, KBD.

Reserved occupation—

Enlistment notice—

Claim to be in reserved occupation—Whether Schedule of Reserved Occupations binding upon the Minister—National Service (Armed Forces) Act 1939. **Roeder v Bevin** [1942] 2 90, CA.

Termination of civilian employment—

Restriction on employers terminating employment by reason of duties employees may be liable to perform or discharge—

Regulations making it offence—Dismissal of conscientious objector—Validity of regulation—Whether employers in breach of regulation—National Service (Armed Forces) Act 1939, ss 5 14(4)—National Service (Armed Forces) Prevention of Evasion Regulations 1939, (S R & O 1939 No 1099) reg 2(1)(a)(b) (2). **Downsborough v Huddersfield Industrial Society Ltd** [1941] 3 434, KBD.

NATIONAL SOCIETY FOR THE PREVENTION OF CRUELTY TO CHILDREN

Discovery of documents—

Privilege—

Confidential information—Public interest. *See* **Discovery** (Privilege—Production contrary to public interest—Persons entitled to resist discovery on ground of public interest—Bodies other than central departments of government—Society incorporated by royal charter for protection of children).

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Coal-mining industry. *See* **Coal mining** (Nationalisation of industry).

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Compensation—

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Foreign—

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Application to register trade mark. *See* **Trade mark** (Opposition to registration—Confusion—Contrary to morality—Mark formerly used by opponent in connexion with his business in Czechoslovakia and Central Europe—Business nationalised in 1948 by Czechoslovakian law).

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Deprivation of nationality—

Recognition by English courts—Deprivation by decree of enemy state in wartime—Public policy precluding recognition of change of status—Recognition once war terminated—War terminating as soon as fighting ceases. **Oppenheimer v Cattermole (Inspector of Taxes)** [1975] 1 538, HL.

Naturalisation during war—

Alien becoming naturalised British subject—Compatibility of allegiance to Crown with allegiance to enemy state—Whether alien ceasing in English law to be national of enemy state on naturalisation. **Oppenheimer v Cattermole (Inspector of Taxes)** [1975] 1 538, HL.

Fugitive offender—

Extradition—

Possibility, if returned, of punishment by reason of nationality. *See* **Extradition** (Fugitive offender—Restrictions on return—Punishment by reason of race, religion, nationality or political opinions).

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Board of Trade investigation of company's affairs—

Proceedings before inspectors. *See* **Company** (Investigation by Board of Trade—Proceedings before inspectors—Natural justice).

Chief constable—

Dismissal by watch committee—

Whether rules of natural justice applicable to proceedings. *See* **Police** (Chief constable—Dismissal—Natural justice).

College—

Dismissal of student. *See* **Education** (College—Governing body—Natural justice).

Company—

Board of Trade investigation—

Proceedings before inspectors. *See* **Company** (Investigation by Board of Trade—Proceedings before inspectors—Natural justice).

Expulsion from company—

Absolute and unfettered power to expel conferred by articles—Property rights livelihood or reputation not infringed by expulsion—Whether natural justice ousted by express terms of articles. **Gaiman v National Assn for Mental Health** [1970] 2 362, ChD.

NATURAL JUSTICE (cont)

Compulsory purchase order—

Inquiry following objection to order—

Inquiry conducted in breach of rules of natural justice—Ground for quashing order. *See Housing* (Quashing of clearance order or compulsory purchase order—Requirement of Act not complied with—Natural justice).

Criminal offence—

Conviction—

Accused not informed of charge—Whether ground for refusing extradition. *See Extradition* (Committal—Power of magistrates to refuse to commit fugitive—Natural justice—Conviction in foreign country obtained in accused's absence and without his knowledge).

Disciplinary board—

Legal advice to board—

Presence of parties—Hong Kong—Architect—Disciplinary board consisting of three authorised architects, the building authority and a legal adviser—Legal adviser having conduct of inquiry—Deliberation of board in private on submissions made on behalf of architect—Rulings given by legal adviser in presence of parties after deliberations concluded—Whether any legal advice given to board by legal adviser must be given in presence of parties and so to appear on the record—Whether breach of rules of natural justice—Hong Kong Buildings Ordinance 1955, (No 68 of 1955), s 5B(2). *Re Chien Sing-Shou* [1967] 2 1228, PC.

Disclosure to parties of information before court—

Court empowered to seek information—

Power to withhold information from parties—Whether fair hearing in accordance with principles of fundamental justice—Industrial Stabilisation Act 1965, (Trinidad and Tobago) (No 8 of 1965) s 11(2) (as substituted by Act No 6 of 1967)—Trinidad and Tobago (Constitution) Order in Council 1962, (S 1 1962 No 1875) Sch 2 s 2(e). *Collymore v Attorney-General of Trinidad and Tobago* [1969] 2 1207, PC.

Dismissal of employee—

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Dismissal of student—

Duty to hear parties etc. *See* Educational establishment—Dismissal of student, *post*.

Divorce—

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Domestic tribunal—

Dismissal of schoolmaster. *See Tribunal* (Membership—Bias).Expulsion from union. *See Trade union* (Expulsion of member).

Jockey Club—

Withdrawal of trainer's licence—Discretion of Jockey Club to withdraw licence—Need to hold inquiry before withdrawal—Conduct of inquiry according to rules of natural justice. *Russell v Norfolk (Duke)* [1949] 1 109, CA.

Legal representation—

Appeal to tribunal on point of law—Refusal by tribunal to allow representation—Declaration more appropriate remedy than appeal. *Enderby Town Football Club Ltd v The Football Association Ltd* [1971] 1 215, CA.

Inquiry into matter affecting licence-holder's reputation and livelihood—National club rules silent as to procedure—Stewards of dog racing track inquiring into doping of dog and requiring trainer's presence at inquiry—Whether trainer entitled to oral hearing—Whether entitled to be represented by counsel and solicitor. *Pett v Greyhound Racing Association Ltd* [1968] 2 545, CA.

Inquiry into matter affecting licence-holder's reputation and livelihood—National club rules silent as to procedure—Stewards of dog-racing track inquiring into drugging of dog and requiring trainer's presence at inquiry—Whether trainer entitled to be represented by counsel and solicitor—Duties of domestic tribunal exercising quasi-judicial powers—Whether requirements of natural justice included legal representation. *Pett v Greyhound Racing Association Ltd* (No 2) [1969] 2 221, QBD.

Political party—

National Executive Committee of Labour Party—Resolution to 'suspend activities' of constituency party—No charges made and no opportunity of being heard—Whether contrary to principles of natural justice. *John v Rees* [1969] 2 274, ChD.

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No rules prescribed. *See Tribunal* (Procedure—No rules prescribed).Trade union. *See Trade union, post*.

Duty to act fairly—

Immigration officer—

Admission of Commonwealth immigrant. *See Commonwealth immigrant* (Admission—Refusal of admission—Discretion of immigration officer—Duty to act fairly).

Duty to act openly, impartially and fairly—

Hackney carriage—

Grant of licence. *See Road traffic* (Hackney carriage—Licence—Grant of licence—Natural justice).

NATURAL JUSTICE (cont)

Educational establishment—

Complaint against teacher—

Duty to hear parties etc—Preliminary investigation—Complaint to school board—Board under statutory duty to appoint sub-committee to make preliminary investigation of complaint—Sub-committee reporting to board in accordance with statutory duty—Teacher knowing nothing of complaint and having no opportunity of making representations to sub-committee—Board suspending teacher following report—Charges referred to disciplinary committee for final determination—Teacher having right to a hearing before disciplinary committee—Whether teacher having right to be heard before decision to suspend taken—Education Act 1964 (New Zealand), s 158—Secondary and Technical Institute Teachers Disciplinary Regulations 1969 (New Zealand), regs 4, 5. *Furnell v Whangarei High Schools Board* [1973] 1 400, PC.

Dismissal of student—

Duty to hear parties etc—College—Academic board—Board composed of heads of department and other academic staff—Board having power to recommend dismissal of student on academic grounds—Board recommending dismissal of student—Board taking into account adverse comments by tutors on student's performance and capabilities—Student not accorded hearing before recommendation made—Whether breach of rules of natural justice. *Herring v Templeman* [1973] 3 569, CA.

Duty to hear parties etc—University—Student sent down for failing examination—Whether student to be heard in defence before decision to send down. *R v Senate of the University of Aston, ex parte Roffey* [1969] 2 964, QBD.

Inquiry into examination offence—

Principal witness not tendered by commission of inquiry for cross-examination by alleged offender—Whether failure to comply with principles of natural justice. *University of Ceylon v Fernando* [1960] 1 631, PC.

Suspension of student—

Duty to hear parties etc—University—Quasi-judicial function—Vice-Chancellor—Power to suspend students—Exercise of power quasi-judicial function—Decision to exclude student from residence—No opportunity given to student to be heard—Whether decision breach of rules of natural justice—Whether decision a matter of internal discipline. *Glynn v Keele University* [1971] 2 89, ChD.

Evidence—

Duty to hear and consider evidence—

Board set up by statute for (among other functions) determining zoning orders—Committee appointed by board to investigate and report—Committee held public hearing—Report did not state evidence—Evidence not taken, and written evidence not considered, by board—Recommendation of committee adopted by board—Zoning order quashed. *Jefferies v New Zealand Dairy Production and Marketing Board* [1966] 3 863, PC.

Industrial injuries tribunal. *See* Industrial injuries tribunal—Evidence, *post*.

Expulsion from company. *See* Company—Expulsion from company, *ante*.

Expulsion from trade union—

Curability of deficiency of natural justice before trial tribunal. *See* Trade union—Deficiency of natural justice justice before trial tribunal—Curability, *post*.

Expulsion from trade union. *See* Trade union (Expulsion of member).

Extradition—

Committal. *See* Extradition (Committal—Power of magistrate to refuse to commit fugitive—Natural justice).

Gaming Board for Great Britain—

Application to board for gaming licence—

Duty of board to observe rules of natural justice. *See* Gaming (Application of premises—Application for licence—Certificate of consent for purposes of licensing for licence—Whether Gaming Board for Great Britain bound to observe rules of natural justice).

Hearing—

Duty to hear parties, etc.—

Company—Investigation by Board of Trade. *See* Company (Investigation by Board of Trade—Proceedings before inspectors—Natural justice—Duty to hear parties).

Determination whether prima facie case—No hearing. *See* Income tax (Tax advantage—Counteracting—Tribunal—Determination whether there is a prima facie case—Procedure—Determination on documents).

Presence of parties—

Deliberations of committee exercising quasi-judicial functions—Prosecuting party present during deliberations of committee—Accused party absent when evidence against him given to committee—Whether breach of rules of natural justice. *R v Barnsley Metropolitan Borough Council, ex parte Hook* [1976] 3 452, CA.

Immigration officer—

Admission of Commonwealth immigrant.

See Commonwealth Immigrant (Admission—Refusal of admission—Discretion of immigration officer—Duty to act fairly).

Examination of entrant. *See* Immigration (Immigration officer—Examination of entrant—Natural justice).

Income tax tribunal—

Duty to hear parties etc—

Determination of prima facie case—Determination an administrative decision—No requirement that in determining whether prima facie case tribunal must hear both parties—Duty of tribunal to act fairly. *Pearlberg v Varty (Inspector of Taxes)* [1972] 2 6, HL.

Industrial injuries tribunal—

Evidence—

Oral hearing—Further medical evidence obtained by tribunal after hearing and before decision—Parties not informed—Whether failure to comply with principles of natural justice. *R v Deputy Industrial Injuries Comr, ex parte Jones* [1962] 2 430, QBD.

NATURAL JUSTICE (cont)

Industrial injuries tribunal (cont)—

Evidence (cont)—

Oral hearing—Medical opinions in previous cases put to expert witnesses—Incorporation of previous medical opinions in decision of industrial injuries commissioner—Whether failure to comply with principles of natural justice. **R v Deputy Industrial Injuries Comr, ex parte Moore** [1965] 1 81, CA.

Inquiry into examination offence. *See* Educational establishment—Inquiry into examination offence, *ante*.

Legal representative—

Domestic tribunal. *See* Domestic tribunal—Legal representation, *ante*.

Magistrates—

Binding-over. *See* **Magistrates** (Binding-over—Natural justice).

Breach of rules of—

Certiorari. *See* **Certiorari** (Justices—Natural justice).

Duty to act openly, impartially and fairly—

Information received prior to hearing—Meeting with local government officials—Inspection of subject-matter—Objectors at hearing aware of point in issue—No unfairness—Food and Drugs Act 1955, s 9(1)(3). **R v Birmingham City Justice, ex parte Chris Foreign Foods (Wholesalers) Ltd** [1970] 3 945, QBD.

Retirement to take advice—Advice received not made known to objectors—Breach of rules of natural justice—Food and Drugs Act 1955, s 9(1)(3). **R v Birmingham City Justice, ex parte Chris Foreign Foods (Wholesalers) Ltd** [1970] 3 945, QBD.

Duty to hear parties etc—

Opportunity to prepare case—Party allocated time for case to be heard—Party not given reasonable opportunity to prepare case—Whether breach of rules of natural justice. **R v Thames Magistrates' Court, ex parte Polemis** [1974] 2 1219, QBD.

Master and servant—

Dismissal of servant—

Trade union official—Applicability of rules of natural justice—Grounds for dismissal prescribed by union rules—Status as a senior officer of union rendering dismissal a serious matter to official—Meeting of executive committee to consider dismissal of official for misconduct—Whether committee bound to comply with rules of natural justice. **Stevenson v United Road Transport Union** [1976] 3 29, ChD.

Medical appeal tribunal—

Duty to make due enquiry—

Extent of duty. **R v National Insurance Commissioner, ex parte Viscusi** [1974] 2 724, CA.

Minister—

Quasi-judicial function. *See* Quasi-judicial function—Minister, *post*.

Non-judicial body—

Investigation of complaint—

Duty to act fairly—Race Relations Board. *See* **Race relations** (Investigation of complaint—Race Relations Board—Duty to act fairly).

Public authority—

Dismissal of employee—

Appointment during authority's pleasure—Statutory protection—Dismissal invalid unless employee receiving not less than three weeks' notice of motion for dismissal—Scottish education authority dismissing teacher for failure to register—Regulations providing every teacher employed by authority to be registered teacher—Refusal to afford teacher opportunity to be heard before dismissal—Right of teacher to be heard before passing of resolution for dismissal—Validity of dismissal—Education (Scotland) Act 1962, ss 82(1), 85(1)—Schools (Scotland) Code 1956 (S I 1956 No 894), reg 4(2), as amended by the Teachers (Education, Training and Registration) (Scotland) Regulations 1967, (S I 1967 No 1162). **Malloch v Aberdeen Corpn** [1971] 2 1278, HL.

Public inquiry—

Duty to hear parties—

Opportunity to consider reasons for decision—Reasons not put forward at hearing—Housing—Compulsory purchase order—Inquiry by inspector—Houses unfit for habitation—Local authority's case that houses unfit because of settlement and rehabilitation not feasible—Inspection of houses by inspector at end of inquiry—Inspector concluding that houses unfit because of foundations and in consequence rehabilitation not feasible—Inadequacy of foundations not part of local authority's case—Owner of houses having no opportunity to refute finding as to inadequacy of foundations—Whether owner prejudiced by breach of rules of natural justice—Whether compulsory purchase order should be quashed. **Fairmount Investments Ltd v Secretary of State for the Environment** [1976] 2 865, HL.

Quasi-judicial function—

Exercise of statutory power—

Minister's order superseding municipal council for incompetence—Duty to act judicially—Inquiry—No opportunity given to council to be heard in defence—Order voidable only in proceedings by or on behalf of council—Municipal Ordinance (cap 252) of Ceylon, s 277(1). **Durayappah v Fernando** [1967] 2 152, PC.

Minister—

Determination whether contravention of statute—Duty to act judicially—Unaided school—No notification of one of two alleged statutory breaches—Reliance on breach not notified shown by subsequent broadcast statement—Failure to consider present as distinct from past conduct of school in deciding statutory breach—Assisted Schools and Training Colleges (Special Provisions) Act, No 5 of 1960—Assisted Schools and Training Colleges (Supplementary Provisions) Act, No 8 of 1961. **Maradana Mosque (Board of Trustees) v Badi-ud-din Mahmud** [1966] 1 545, PC.

NATURAL JUSTICE (cont)

Remedies for breach of rules of natural justice—

Remedies for conduct of proceedings being contrary to natural justice—

Necessity for contractual relationship—Whether proceedings of joint investigating committee of film renters protection society and trade union of exhibitors conducted in accordance with natural justice. *Byrne v Kinematograph Renters Society Ltd* [1958] 2 579, ChD.

Remedy—

Injunctions—

Discretion. *See* **Injunction** (Discretion—Natural justice).

Suspension of student—

Duty to hear parties etc. *See* Educational establishment—Suspension of student—Duty to hear parties etc, *ante*.

Teacher—

Complaint against teacher—

Duty to hear parties etc. *See* Educational establishment—Complaint against teacher—Duty to hear parties etc, *ante*.

Trade union—

Deficiency of natural justice before trial tribunal—

Adjudication on union member's conduct—Appeal by member to annual conference of delegates—Whether member could thereafter seek redress in the courts. *Annamunthodo v Oilfields Workers' Trade Union* [1961] 3 621, PC.

Curability—Sufficiency of natural justice in subsequent proceedings—Expulsion from trade union. *Leary v National Union of Vehicle Builders* [1970] 2 713, ChD.

District committee of union—

Discretion to refuse member's election as shop steward—Reasons for decision—Reason given for refusal at time of decision erroneous and prejudicial to member—Evidence given at trial five years later of real reason for decision—Evidence to show what happened at committee meeting—Committee not precluded from asserting that reason given to member was not real reason for decision. *Breen v Amalgamated Engineering Union* [1971] 1 1148, CA.

Duty to act judicially—

Chairman acting as accuser—Official of union employed on terms of union rules—Dismissed by general secretary for insubordination—Dismissal might involve disabilities as a member of union—Appeal by official in exercise of right conferred by rules to executive council—Duty of council under rules to act judicially—Consequences in issue on appeal not merely termination of employment but also ineligibility under rules to certain positions in union—Chairman of council acting as accuser and prejudicial matter introduced in plaintiff's absence—Whether declaration of continuance of employment etc should be made. *Taylor v National Union of Seamen* [1967] 1 767, ChD.

Right to be heard—

Refusal of district committee to endorse member's election as shop steward—Functions of committee under union rules discretionary—Requirement to exercise discretion fairly—Member not invited to attend meeting at which endorsement of election refused—Reasons for decision—Committee entitled to come to decision in absence of member on basis of valid reasons—Right of member to be present to refute prejudicial reason based on erroneous facts. *Breen v Amalgamated Engineering Union* [1971] 1 1148, CA.

Witness—

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NATURE

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NATURE RESERVE

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NAVIGATION

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Ordinary incidents of navigation—Laying and maintenance of permanent moorings).

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Public right to navigate. *See* **Water and watercourses** (Navigation—Public right to navigate tidal waters).

NAVY

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Discipline—

Summary jurisdiction of captain—

Naval officer disobeying orders—'Wilful disobedience'—'Highly insubordinate conduct'—

Meaning of terms—Naval Discipline Act 1866, s 17, s 56(2)—King's Regulations and Admiralty Instructions, arts 540, 552. *Jenkins v Shelley* [1939] 1 786, KBD.

NE EXEAT REGNO

Writ of. *See* **Equity** (*Ne exeat regno*).

NECESSITY

Agency of necessity. *See* **Agent** (Agency of necessity).

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NEGLECT

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Criminal offence. *See* **Criminal law** (Child—Wilful neglect of child).

Proceedings in juvenile court. *See* **Children and Young Persons** (Care—Proceedings in juvenile court—Conditions to be satisfied before making order—Neglect or ill-treatment of child or young person).

Income tax—

Additional assessment. *See* **Income tax** (Additional assessment—Neglect).

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Wilful neglect to maintain. *See* **Husband and Wife** (Maintenance—Wilful neglect to maintain).

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Cargo damaged by negligence. *See* **Shipping** (Bill of lading—Transfer of rights and liabilities—Cargo damaged by negligence).

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Carriage of passengers. *See* **Carriage by air** (Carriage of passengers—Negligence).

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Liability of hospital. *See* **Hospital** (Liability for negligence of members of staff—Casualty officer).

Catchment board—

Duty to repair sea wall. *See* **Land drainage** (Sea wall—Negligence—Duty of catchment board to repair).

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Breach of duty causing or contributing to damage—

Advice to workman—Likelihood of advice being taken—Duty of employer to give information or advice—Effect of unlikelihood of plaintiff's taking advice if given. **Qualcast (Wolverhampton) Ltd v Haynes** [1959] 2 38, HL.

Breach of duty causing or materially contributing to damage—

Increase in risk of damage—Damage caused or contributed to by factors for which defendant not responsible—Defendant's breach of duty materially increasing risk of damage to plaintiff—No positive evidence that plaintiff would not have suffered damage in absence of defendant's breach of duty—Whether defendant liable to plaintiff in respect of breach of duty. **McGhee v National Coal Board** [1972] 3 1008, HL.

Breach of duty causing or contributing to damage—

Onus of proof—Onus on plaintiff—Employer and employee—Proof of breach of statutory duty—Whether onus of proving breach did not contribute to plaintiff's injury on employer. **Bonnington Castings Ltd v Wardlaw** [1956] 1 615, HL.

NEGLECTANCE (cont)

Causation (cont)—

Breach of duty causing or contributing to damage (cont)—

Safety equipment—Provision of safety appliance—Instruction or exhortation to use appliance—Safety belt not available to experienced steel erector on day of accident—Fatal fall from tower crane under construction—Deceased would not have worn belt if available—Practice among steel erectors not to wear safety belts for job that deceased was doing—Employer not under duty to order or to exhort employees to wear belts—Factories Act 1937, s 26(2)—Building (Safety, Health and Welfare) Regulations 1948, (S I 1948 No 1145), reg 97. *Cummings (or McWilliams) v Sir William Arrol & Co Ltd* [1962] 2 623, HL.

Child—

Allurement. *See* Children—Allurement—Causal connection between allurement and injury, *post*.

Contributory negligence. *See* Contributory negligence—Causation, *post*.

Intervening act—

Conduct of plaintiff—Collision at sea—Refusal by plaintiffs of defendants' offer to tow—Plaintiffs' ship subsequently sinking and becoming a total loss—Reasonableness of refusal—Whether refusal breaking chain of causation. *The Guildford* [1956] 915C PDA.

Intervention of third party—

Children—Foreseeability of interference by children—Vehicle park—Open parking ground—Motor coach adjacent to boundary—Explosion caused by child throwing lighted match into petrol tank—Injury to another child outside vehicle park—Whether occupiers of vehicle park liable. *Perry v Kendrick's Transport Ltd* [1956] 1 154, CA.

Damage direct result of breach of duty of care—Security of premises—Decorator leaving house with front door unlocked during known absence of tenants—Entry and theft by third party—Liability of decorator for loss occasioned by theft. *Stansbie v Troman* [1948] 1 599, CA.

Damage natural consequence of negligence—Immediate cause of damage unexplained—Onus of proving intervention of third party on defendant—Escape of water from pipe with open end and without drain—No explanation for cause of escape. *A Prosser & Son Ltd v Levy* [1955] 3 577, CA.

Dangerous things—Deliberate act of third party necessary to constitute novus actus interveniens—Onus of proof—Inflammable material—Delivery by defendants to plaintiffs by mistake—Explosion caused by cigarette of plaintiffs' employee—Onus on defendants to prove that employee deliberately set material alight. *Philco Radio and Television Corp'n of Great Britain Ltd v J Spurling Ltd* [1949] 2 882, CA.

Reasonable act in circumstances not breaking chain of causation—Plaintiff's act the natural consequence of position in which he was placed—Direct consequence of defendants' negligence—Collision at sea—Men ordered to boats—Death of seaman through boat capsizing—Whether death direct consequence of collision. *Lord v Pacific Steam Navigation Co Ltd The Oropesa* [1943] 1 211, CA.

Predominant cause—

Railway track—Bomb crater caused by enemy action—Engine-driver ordered to proceed 'at caution'—Train driven down line and into crater—Whether negligence of railway company in ordering driver to proceed predominant cause of accident—Personal Injuries (Emergency Provisions) Act 1939, s 3(1), s 8. *Greenfield v London & North Eastern Ry Co* [1944] 1 696, KBD, [1944] 2 438, CA.

Child—

Parent's liability.

See Child (Negligence—Parent's liability).

Children—

Allurement—

Causal connection between allurement and injury—Child injuring itself on obvious danger not part of allurement—Road works—Pile of metal left on part of road fenced off—Children allowed to play on nearby sand heap—Child leaving sand and injuring itself on metal—Metal not itself an allurement—Whether any causal connection between injury and allurement constituted by sand. *Morley v Staffordshire County Council* [1939] 4 92, CA.

Child trespasser—Liability of persons other than occupiers of land—Contractors—Electricity undertakers—High-voltage electric overhead wires—Easily climbed tree immediately below wires—Child electrocuted while climbing tree—Liability of undertakers. *Buckland v Guildford Gas, Light and Coke Co* [1948] 2 1086, KBD.

Child trespasser—Liability of persons other than occupier—Standard of care—Trailer left by contractors on land adjoining road in course of construction—Contractors not in occupation of land—Child injured while playing with trailer—Duty of contractors to child. *Creed v John McGeoch & Sons Ltd* [1955] 3 123, Assizes.

Duty to protect thing from interference by children—Flagpole—Flagpole erected in public place—Children attracted to pole and swinging on rope—Inadequate steps taken to prevent them from doing so—Pole falling and injuring plaintiff. *Shiffman v The Grand Priory in the British Realm of the Venerable Order of the Hospital of St John of Jerusalem* [1936] 1 557, KBD.

Lorry on highway constituting an allurement—Lorry laden with sacks of sugar—Sugar escaping on to highway—Provision of look-out man at rear—Child running on to highway to catch sugar—Look-out man unable to see child—Child injured by lorry's trailer—Whether owners of lorry liable to child. *Culkin v McFie & Sons Ltd* [1939] 3 613, Assizes.

Nature of an allurement—Something attractive but dangerous to children—Hole in the ground not of itself an allurement—Child trespasser injured by falling into pit. *Perry v Thomas Wrigley Ltd* [1955] 3 243, Assizes.

Reasonable steps taken to avoid danger—Scaffold—Erection for repair of house—Children injured by scaffold being pulled over by boys—Foreseeable danger of young persons interfering with scaffolding—Whether defendants could reasonably have foreseen events which caused scaffolding to fall. *Cutress v Scaffolding (Great Britain) Ltd* [1953] 2 1075, CA.

NEGLIGENCE (cont)

Children (cont)—

Apprehension of danger to children—

Objects left on highway—Pile of lime mortar left by defendant in gutter outside his house—

Piece thrown by boy injuring child plaintiff—Whether evidence of negligence by occupier—

Whether defendant could reasonably be expected to apprehend danger to children. **Prince v Gregory** [1959] 1 133, CA.Contributory negligence. *See* Contributory negligence—Child, *post*.Intervention by children breaking chain of causation. *See* Causation—Intervention of third party—Children, *ante*.Club. *See* Club (Negligence).

Collision—

Vehicles on road—

Proof of negligence. *See* Negligence (Proof of negligence—Collision between vehicles on road).

Collision at sea—

Contributory negligence. *See* Contributory negligence—Collision between vehicles on road, *post*.Generally. *See* Shipping (Negligence in collision cases).

Towage—

Negligent navigation. *See* Shipping (Collision—Towage—Negligent navigation).

Collision between vehicles on road—

Contributory negligence. *See* Contributory negligence—Collision between vehicles on road, *post*.Concealment of right of action by fraud. *See* Limitation of action (Concealment of right of action by fraud—Negligence).

Consequential loss—

Damage to property—

Economic loss—Duty to take care. *See* Duty to take care—Economic loss—Damage to property, *post*.Damage to property of another. *See* Duty to take care—Damage to property of another—Consequential loss to plaintiffs, *post*.

Construction work—

Building. *See* Building (Construction work—Negligence).

Contributory negligence—

Appeal—

Inference of contributory negligence—Rejection of plea of contributory negligence by judge—Shunter injured by fall from railway engine caused by ground lever working points—

Whether inference of contributory negligence from circumstances permissible on appeal.

Hicks v British Transport Commission [1958] 2 39, CA.Principle on which appellate court will interfere with apportionment of liability. *See* Contributory negligence—Principle on which appellate court will interfere with apportionment of liability, *post*.

Apportionment of liability—

Method of apportionment—Assessment of damages—Proportion of sums claimed—Claim and counterclaim arising out of collision—Liability apportioned two-thirds to plaintiffs and one-third to defendant—Plaintiffs entitled to one-third and defendants to two-thirds of respective sums claimed by them—Law Reform (Contributory Negligence) Act 1945, s 1. **William A Jay & Sons v J S Veevers Ltd** [1946] 1 646, Assizes.

Breach of Highway Code—

Plaintiff in breach of code—Breach creating no presumption of negligence making a real contribution to cause of accident—Plaintiff a pedestrian—Walking at night along pavement in straight, lighted street in built-up area—Walking in or near gutter where pavement slushy—Dark clothing—Not facing oncoming traffic—Plaintiff struck from behind by fast moving car—Driver solely responsible for accident—Road Traffic Act 1960, s 74(5). **Powell v Phillips** [1972] 3 864, CA.

Breach of statutory directions—

Employer and employee—Employee acting in breach of statutory directions—Employee injured in coal mining accident—Breach of statutory duty by employers and of statutory directions by employee—Employee acting in accordance with orders of immediate superior—Law Reform (Contributory Negligence) Act 1945, s 1(1). **Laszczyk v National Coal Board** [1954] 3 205, Assizes.

Burden of proof—

Allegation that plaintiff's negligence contributed to damage suffered—Road accident—Failure to wear seat belt—No evidence that failure contributed to extent of plaintiff's injuries—Whether burden on defendant to prove that injuries in whole or in part attributable to failure to wear a seat belt. **Owens v Brimmell** [1976] 3 765, QBD.

Causation—

Collision between vehicles on road. *See* Contributory negligence—Collision between vehicles on road—Causation, *post*.Last opportunity doctrine inappropriate—Negligence of plaintiff must be a factor contributing to accident—No need to prove breach of duty to defendant—Lack of reasonable care by deceased for his own safety—Law Reform (Contributory Negligence) Act 1945, ss 1(1), 4. **Davies v Swan Motor Co (Swansea) Ltd (Swansea Corpn and James, third parties)** [1949] 1 620, CA.Proximate cause of injury—Plaintiff's failure to take care—Fall down lift shaft—Plaintiff stepping backwards through lift door—Lift defective in that door opened when lift at another level—Whether entitled to assume presence of lift if door opened. **Kerry v Keighley Electrical Engineering Co Ltd** [1940] 3 399, CA.

Child—

Explosive substance given to child—Sale of petrol to child—Sale procured by untruth told by child—Injury by explosion of ignited petrol—Liability of seller—Whether contributory negligence could be imputed to child. **Yachuk v Oliver Blais Co Ltd** [1949] 2 150, PC.

NEGLIGENCE (cont)**Contributory negligence (cont)—**

Child. *See* Child (Negligence—Contributory negligence).

Collision at sea—

Last opportunity of avoiding accident—Vessel improperly anchored athwart fairway. *See* Contributory negligence—Last opportunity of avoiding accident—Continuing negligence—Vessel improperly anchored athwart fairway, *post*.

Vessel overtaking in swept channel—Narrow berth given—Overtaken vessel changing course. *Admiralty Comrs v North of Scotland and Orkney and Shetland Steam Navigation Co Ltd* [1947] 2 350, HL.

Collision between vehicles on road—

Ambulance with left-hand drive—Warning notice on back—Back of ambulance shut in—Ambulance driver unable to see cars close behind—Ambulance driver turning to right when motor omnibus close behind—Correct hand signals given by ambulance driver—Negligence of omnibus driver—Whether ambulance driver guilty of contributory negligence. *Daborn v Bath Tramways Motor Co Ltd and Trevor Smithey* [1946] 2 333, CA.

Causation—Obstruction of highway—Danger to road users—Danger to road users failing to keep proper look-out—Collision caused by negligent driving of following vehicle—Obstruction contributing to collision—Driver negligently causing lorry to jack-knife and obstruct two lanes of motorway at night—Lorry behind stopping and illuminating scene with headlights—Third party driving lorry too fast and failing to observe obstruction until too late—Collision following belated attempt of third party to avoid obstruction—Collision caused by negligent driving of third party—Whether negligence of driver of jack-knifed lorry contributing to collision. *Rouse v Squires* [1973] 2 903, CA.

Duty to have regard to danger created by other driver—Collision at cross-roads—Major and minor road—'Slow, Major road ahead' sign in minor road—Motor cyclist emerging from minor road without observing sign and without slowing down, at speed of twenty miles an hour—Omnibus travelling on major road at speed of not more than twenty miles an hour—Possibility of danger emerging—Duty of omnibus driver to take precautions—Whether omnibus driver guilty of contributory negligence. *Lang v London Transport Executive* [1959] 3 609, QBD.

Failure to observe signals—Parked car aiming to cut across near traffic stream—Bus in stream stopping to allow it—Bus driver's flashing of lights—Car pulling out—Collision with moped overtaking bus—Moped solely responsible. *Clarke v Winchurch* [1969] 1 275, CA.

Traffic lights—Relevance of green light signal—Collision at road junction—Fiveway road junction controlled by traffic lights—Collision between pedal cyclist and motor car—Plaintiff cyclist legitimately on junction when lights in his favour—Defendant motorist entering junction from cyclist's left when lights changing in his favour—Cyclist failing to see car—No absolute right to enter road junction merely because lights are green—Duty of care to road users already legitimately on the junction—Cyclist failing to take action to avoid collision—Burden of proof on defendant to show that cyclist could have avoided accident. *Radburn v Kemp* [1971] 3 249, CA.

Cross-claims—

Costs—Both parties to blame—Proper order as to costs. *Smith v W H Smith & Sons Ltd* [1952] 1 528, CA.

Damages—

Jurisdiction of court—Damages before apportionment assessed at sum in excess of that which court had jurisdiction to award—Reduced to amount within limits of jurisdiction—County Courts Act 1934, s 40(1)—Law Reform (Contributory Negligence) Act 1945, s 1(1) (2). *Kelly v Stockport Corp'n* [1949] 1 893, CA.

Emergency act—

Rescue of child—Highway—Plaintiff escorting child—Child stepping on to road—plaintiff running into road to rescue child from danger—Plaintiff injured by motor cycle—Whether plaintiff guilty of contributory negligence. *Morgan v Ayles* [1942] 1 489, KBD.

Employer and employee—

Employee prepared mould for casting with handle obstructing pouring aisle—Stumbled over handle and suffered injury—Employers in breach of Iron and Steel Foundries Regulations 1953—Whether just or equitable to reduce employee's damages—Law Reform (Contributory Negligence) Act 1945, s 1. *Hawkins v Ian Ross (Castings) Ltd* [1970] 1 180, QBD.

Failure to disclose disability—

Employer and employee—Breach of building regulations—Fatal accident—Employee's fall from platform—Employee failing to disclose liability to epileptic fits—Law Reform (Contributory Negligence) Act 1945, s 1(1). *Cork v Kirby Maclean Ltd* [1952] 2 402, CA.

Fatal accident. *See* Fatal accident (Damages—Deduction from damages—Contributory negligence).

Inadvertence—

Accidental contribution to injury—Mechanical fitter accidentally touching with screwdriver uncovered electric junction box while adjusting mechanism of machine—No contributory negligence. *Kansara v Osram (GEC) Ltd* [1967] 3 230, CA.

Judge's reasons—

Appeal—Need for copy of judge's notes of evidence and of his reasons. *Johnson v Rea Ltd* [1961] 3 816, CA.

Knowledge of danger—

Blackout during wartime—Duty of pedestrian on highway—Duty of pedestrian to look behind or get off road—Bus using sidelights placed too high and no headlights—Pedestrian knocked down by bus. *Franklin v Bristol Tramways and Carriage Co Ltd* [1941] 1 188, CA.

NEGLIGENCE (cont)**Contributory negligence (cont)—****Lack of reasonable care by plaintiff for own safety—**

Existence of contributory negligence not depending on duty of care—Collision between vehicles on highway—Duty of plaintiff towards other road users. **Nance v British Columbia Electric Ry Co Ltd** [1951] 2 448, PC.

Motor accident—Duty to other road users—Collision between motor car and unlighted motor cycle combination in which plaintiff a passenger—Plaintiff's knowledge that motor cycle combination had no lights—Lack of reasonable care by plaintiff for her own safety—Whether plaintiff guilty of contributory negligence. **Dawrant v Nutt** [1960] 3 681, Assizes.

Last opportunity of avoiding accident—

Continuing negligence—Vessel improperly anchored athwart fairway—Colliding vessel failing to keep proper look-out—Continuing negligence by anchored vessel—Neither vessel having last opportunity of avoiding accident—Both vessels equally to blame. **Corstar (Owners) v Eurymedon (Owners), The Eurymedon** [1938] 1 122, CA.

Principle on which appellate court will interfere with apportionment of liability—

Change in ground of liability—Finding of common law negligence substituted on appeal for finding of breach of statutory duty—Duty of appellate court to reconsider apportionment of liability in light of changed ground of liability. **Quintas v National Smelting Co Ltd** [1961] 1 630, CA.

Error in principle—Apportionment by trial judge not interfered with save for error in principle or where clearly erroneous—Law Reform (Contributory Negligence) Act 1945, s 1(1). **Brown v Thompson** [1968] 2 708, CA.

Error in principle—Apportionment by trial judge not interfered with save for error in principle or where clearly erroneous—Pedestrian struck by motor car when crossing road—Pedestrian and driver with clear view of each other—No evasive action taken—Whether trial judge's apportionment to be amended. **Baker v Willoughby** [1969] 3 1528, HL.

Factual basis of assessment—Substantial misjudgment by trial judge of factual basis on which he made his assessment. **Jennings v Norman Collision (Contractors) Ltd** [1970] 1 1121, CA.

Misdirection by trial judge—Substantial misdirection. **Kerry v Carter** [1969] 3 723, CA.

Road accident—

Collision between vehicles. *See* Contributory negligence—Collision between vehicles on road, *ante*.

Crash helmet—Failure to wear—Motor cyclist not wearing crash helmet—Whether contributory negligence. **Hilder v Associated Portland Cement Manufacturers Ltd** [1961] 3 709, QBD.

Crash helmet—Failure to wear—Plaintiff's share of responsibility for injury—Defendant wholly to blame for accident—Plaintiff's lack of care contributing to extent of injury—Liability of plaintiff for contributory negligence—Plaintiff a motor cyclist—Failure to wear crash helmet. **O'Connell v Jackson** [1971] 3 129, CA.

Lack of care by plaintiff. *See* Contributory negligence—Lack of reasonable care by plaintiff for own safety—Motor accident, *ante*.

Learner-driver and instructor—Instructor injured by reason of driver's negligence—Instructor in part control of car—Failure of instructor to avoid accident—Whether instructor guilty of contributory negligence. **Nettlehip v Weston** [1971] 3 581, CA.

Passenger in car—Passenger knowing that driver under influence of drink—Passenger having accompanied driver on drinking session—Effect of alcohol to diminish driver's capacity to drive safely and passenger's capacity to appreciate the danger—Passenger injured in consequence of accident caused by driver's negligence—Whether passenger guilty of contributory negligence in riding with driver under influence of drink. **Owens v Brimmell** [1976] 3 765, QBD.

Seat belt—Failure to wear—Plaintiff's share of responsibility for injury—Plaintiff front seat passenger—Car belonging to and driven by defendant—Car fitted with seat belts—Plaintiff failing to wear seat belt—Defendant failing to draw attention to seat belt—Accident caused by driver's negligence—Plaintiff suffering injury—Evidence that injury caused or contributed to by failure to wear seat belt—Plaintiff's share of responsibility for injury. **Pasternack v Poulton** [1973] 2 74, QBD.

Seat belt—Failure to wear—Plaintiff's share of responsibility for injury—Vehicle fitted with seat belts—Plaintiff not wearing seat belt—Accident caused wholly by negligence of defendant—Plaintiff suffering injuries which would have been avoided if he had been wearing a seat belt—Plaintiff in part responsible for injuries—Plaintiff guilty of contributory negligence—Amount by which damages should be reduced. **Froom v Butcher** [1975] 3 520, CA.

Standard of care imposed on plaintiff—

Duty to take precautions—Scalding water from shower—Whether person entering shower should have tested water first. **Foulder v CPS Ltd** [1969] 1 283, Assizes.

Two plaintiffs—

Contributory negligence of one—Recovery of damages by defendant from plaintiff partly to blame—Judgment for first plaintiff against defendant—Second plaintiff one third to blame—Right of defendant to recover from second plaintiff one third of damages payable to first plaintiff—Law Reform (Contributory Negligence) Act 1945, s 1(1). **Drinkwater v Kimber** [1952] 1 701, CA.

NEGLIGENCE (cont)**Contributory negligence (cont)—****Unsafe system of work—**

Workman's knowledge of danger—Failure of employer to provide proper appliance—Method adopted less safe than recognised method—Failure by employers to provide proper tackle for rigging operation—Skilled rigger wishing to use proper tackle resorting to make-shift tackle in order to get on with job—Whether rigger guilty of contributory negligence. **Machray v Stewarts and Lloyds Ltd** [1964] 3 716, Assizes.

Workman and fellow employee—

Breach of statutory duty—Vicarious liability of employer—Deceased and fellow workmen in breach of statutory regulations—Vicarious liability of employer in respect of death of deceased—Deceased's share in responsibility assessed at 80 per cent—Employers liable for 20 per cent of liability—Law Reform (Contributory Negligence) Act 1945, s 1(1). **Stapley v Gypsum Mines Ltd** [1953] 2 478, HL.

Dangerous method of work adopted by plaintiff and fellow employees—Method contrary to employers' instructions—Duty owed by each of employees to other—Plaintiff injured—Employers incautiously liable for breach of duty by fellow employees—Plaintiff's share of blame 50 per cent—Law Reform (Contributory Negligence) Act 1945, s 1(1). **Williams v Port of Liverpool Stevedoring Co Ltd** [1956] 2 69, Assizes.

Damage**Admission of negligence but denial of damage—**

Judgment. See Judgment (**Judgment on admission of facts—Negligence**).

Damage to property—**Economic loss—**

Duty to take care. See Duty to take care—Economic loss—Damage to property, *post*.

Damages—**Assessment—**

Appeal—Principle on which appellate court will intervene. See Damages (Assessment—Principle on which appellate court will intervene).

Economic loss—

Loss not consequent on physical damage. See Damages (Remoteness of damage—Economic loss not consequent on physical damage).

Fatal accident. See Fatal accident (Damages). See Fatal Accident (Damages).

Jurisdiction of county court. See County Court (Jurisdiction—Negligence—Damages).

Measure of damages. See Damages (Measure of damages—Negligence).

Nervous shock. See Damages (Personal injury—Nervous shock).

Personal injury. See Damages (Personal injury).

Remoteness of damage. See Damages (Remoteness of damage).

Dangerous machinery. See Safe system of working (Dangerous machinery).

Dangerous things—**Causation—**

Intervention of third party. See Causation—Intervention of third party—Dangerous things, *ante*.

Danger in purchaser's hands—

Duty to warn purchaser or refrain from sale—Sale of pistol and blank cartridges to child aged 12—Liability of vendor to stranger injured. **Burfit v A & E Kille** [1939] 2 372, KBD.

Sale of bow and arrow to boy of ten years—Injury to schoolchild—Liability of vendor—Whether bow and arrow dangerous thing to put into hands of particular purchaser. **Ricketts v Erith Borough Council** [1943] 2 629, KBD.

Defect discoverable by reasonable diligence—

Car in dangerous condition—Car purchased by plaintiff from dealer—Condition discoverable by dealer using reasonable diligence—Liability of dealer for failure to examine car or warn purchaser. **Andrews v Hopkinson** [1956] 3 422, Assizes.

Distributor's liability—

Exclusion of intermediate examination by advertising safety of goods—Hair dye—Distributors advertising product as absolutely safe and harmless and needing no preliminary test—Hairdresser applying dye to customer's head—Liability of distributors to customer. **Watson v Buckley, Osborne, Garrett & Co Ltd and Wyrovoys Products Ltd** [1940] 1 174, Assizes.

Duty to take special precautions—

Gas cylinder—Danger from leakage—Cylinder introduced into ship by contractor—Special care needed to move cylinder—No instructions to others working on ship as to how it should be moved when necessary to do so—Explosion caused by leakage of gas—Contractors responsible for explosion. **Beckett v Newalls Insulation Co Ltd** [1953] 1 250, CA.

Employer's liability to workmen—

No opportunity for intermediate examination—Tool supplied for use in trade—Tool obtained from reputable suppliers—Workman injured in consequence of defect—Whether employers having used reasonable care and skill in providing tool. **Davie v New Merton Board Mills Ltd** [1959] 1 346, HL.

Factory occupier—

Duty to avoid leaving machinery in potentially dangerous condition—Electrically driven machine (circular saw) being connected up by electrical contractor—Machine left by factory occupier in condition which would be dangerous if machine switched on—Contractor's workman wiring up machine with duty to test, and to ask occupiers' permission first—Failure to ask permission—Contributory negligence. **Field v E E Jeavons & Co Ltd** [1965] 2 162, CA.

NEGLIGENCE (cont)

Dangerous things (cont)—

Knowledge of danger—

Appearance not indicating danger to defendants—Disposal of refuse in barge—Refuse including metal shavings—Shavings mainly magnesium and liable to ignite when brought into contact with other refuse—Shavings generating fire in barge—Whether defendants liable to barge owners for negligence in loading shavings. **C Burley Ltd v Stepney Corp** [1947] 1 507, KBD.

Conversion of article into dangerous thing—Assembling of article in manner as to make it dangerous—Steam valve—Defendants assembling valve into one part upside down then by winding it dangerous—Escape of steam injuring plaintiff—Defendants liable for danger which to their knowledge they had evaded. **Howard v Furness Houlder Argentine Lines Ltd and A & R Brown Ltd** [1936] 2 781, KBD.

Plaintiff's knowledge of defect avoiding duty on part of defendant—Factory owner and servant of contractor working factory—Chains supplied by factory owner for use by contractor's servants in factory—Chains unsuitable for purpose for which required—injury to servant of contractor—Nature and quality of chains well known both to servant and to contractor—Whether factory owner liable to servant of contractor. **Gledhill v Liverpool Abattoir Utility Co Ltd** [1957] 3 117, CA.

Landlord's liability for dangerous installation—

Gas geyser—Defective installation by landlord—Landlord's attention drawn to defect by gas company—Lodger or tenant gassed in bathroom because of defective installation—Whether landlord liable to lodger. **Travers v Gloucester Corp** [1946] 2 506, KBD.

Gratuitous installation—Domestic boiler installed in dwelling-house by landlord—Boiler in dangerous condition—Tenant's daughter injured by explosion. **Ball v London County Council** [1949] 1 1056, CA.

Manufacturer's liability—

Onus of proof—Lapse of time since purchase—Windscreen manufactured by defendants and bought by plaintiff—Windscreen shattering year after being fitted to plaintiff's car—No explanation for accident—Whether breach of duty proved against defendant. **Evans v Triplex Safety Glass Co Ltd** [1936] 1 283, KBD.

Reasonable steps to be taken before putting dangerous article on market—Warning to ultimate recipient—Necessity for—Hair dye—Warning given by manufacturers to hairdresser—Character of preparation not brought to knowledge of customer—Failure of hairdresser to take precautions—Injury to customer—Whether manufacturers liable to customer. **Holmes v Ashford** [1950] 2 76, CA.

Warning to customer—Sale for purposes of resale—Opportunity for intermediate examination—Chemicals supplied for experiments in school—Warning in invoice not transmitted—Explosion injuring schoolgirl—Liability of manufacturer to schoolgirl—Law Reform (Married Women and Tortfeasors) Act 1935, s 6. **Kubach v Hollands (Frederick Allen & Son (Poplar) Ltd third party)** [1937] 3 907, KBD.

Occupier of premises—

Standard of care owed to invitee—Work of kind requiring special care—Manufacture of high explosives in ordnance factory—Injury to invitee from explosion—Liability of occupier to invitee. **Read v J Lyons & Co Ltd** [1946] 2 471, HL.

Opportunity for examination—

Manufacturer's liability to retailer—Sale for purposes of resale—Opportunity for intermediate examination after sale for purposes of resale—Sweets—Retailer's finger injured by wire in one of sweets. **Barnett v H & J Packer & Co Ltd** [1940] 3 575, KBD.

Proximate relationship—Manufacturer's liability to third party—Kiosk housing electrical transformer—Kiosk supplied by manufacturers to electrical suppliers—Faulty construction rendering kiosk dangerous—Ample opportunity for examination by suppliers—Manufacturers not liable for death of workman killed in consequence of faulty construction. **Paine v Colne Valley Electricity Supply Co Ltd and British Insulated Cables Ltd** [1938] 4 803, KBD.

Reasonable expectation of examination—Sale of article for immediate use—Reconditioned car—Accident due to defective condition of car—Opportunity for examination of car—No expectation that opportunity would be used—Liability of supplier. **Herschthal v Stewart and Ardern Ltd** [1939] 4 123, KBD.

Repairer's liability—

Duty to execute repairs carefully—Lift—Contract of maintenance—Repair improperly carried out by repairer causing defect in lift—User of lift injured when lift fell to bottom of well—Liability to repairer to user of lift. **Haseldine v C A Daw & Son Ltd** [1941] 3 156, CA.

Inefficient repair—Defect not discoverable by owner of article repaired—Repair of motor lorry—Accident on highway—Latent defect due to inefficient repair—Defect not discoverable on inspection—Liability of repairer to person injured in accident. **Stennett v Hancock and Peters** [1939] 2 578, KBD.

Wholesaler's liability to ultimate customer—

Warning to customer—Failure to give warning—Description stating substance dangerous in certain cases—Hair dye applied by hairdresser to customer—Dye causing dermatitis—Liability of manufacturer to customer. **Parker v Oloxo Ltd and Senior** [1937] 3 524, Assizes.

NEGLIGENCE (cont)

Defective premises—

Builder's liability—

Owner of premises—Duty to subsequent purchaser. *See* Duty to take care—Owner of realty—Duty to subsequent purchaser in respect of hidden defects, *post*.

Personal injury—Proximity of relation—Builders of house for occupation by local authority tenant—Fault in construction—Plaintiff injured by canopy falling in consequence of fault—Fall occurring eight years after construction—Whether duty of care owed to plaintiff by builder. **Sharpe v E T Sweeting & Son Ltd** [1963] 2 455, Assizes.

Contractor's liability—

Safety of visitors—Duty to take precautions for the safety of others—Building contractors removing ramp giving access to house—Effect of removal to prevent safe access to house—Liability of contractors for injury caused to visitor. **A C Billings & Sons Ltd v Riden** [1957] 3 1, HL.

Creation of dangerous conditions—

Duty to take precautions for safety of others—Extent of duty—Whether to warn or to take steps to protect others from injury—Stevedores loading cargo on to ship—Shed floor rendered slippery by soda ash in cargo—No steps taken to remedy this—Lorry man bringing cargo injured through slipping on floor. **Johnson v Rea Ltd** [1961] 3 816, CA.

Danger not apparent—

Reasonable care by plaintiff avoiding danger—Stairs—No electric light—Handrail ending before bottom of stairs—Visitor on premises falling down stairs—Whether occupiers in breach of common duty of care. **Wheat v E Lacon & Co Ltd** [1966] 1 582, HL.

Defence—

Acceptance of statutory compensation—

Onus of proof—Knowledge of common law rights—Employer and employee—Acceptance by employee of compensation under Workmen's Compensation Acts—Onus on employer of proving that workman accepted compensation with knowledge of his common law right to recover damages for negligence—Workmen's Compensation Act 1925, s 29(1). **Olsen v Magnesium Castings and Products Ltd** [1947] 1 333, CA.

Exclusion of liability—

Notice—Implied agreement—Freedom to choose whether to submit to terms of notice—Employee acting in course of employment—Plaintiff employed as lighterman on barge—Train of barges being brought into dock by means of capstan rope provided and operated by defendants—Notice excluding liability of defendants to lightermen availing themselves of assistance provided by defendants—Plaintiff injured by reason of defect in rope caused by defendants' negligence—Notice apt to cover accident—Plaintiff not free to refuse to avail himself of assistance provided by defendants—Whether notice protecting defendants from liability. **Burnett v British Waterways Board** [1973] 2 631, CA.

Statutory board—Duty to have regard to safety of operations in provision of services and facilities—Power to make use of services and facilities subject to such terms and conditions as board think fit—Power to exclude liability for negligence in providing services and facilities—Power to exclude liability in absence of contract—British Waterways Board—Plaintiff employed as lighterman on barge—Barge being brought into dock by means of capstan rope provided by board—Notice excluding liability for board's negligence—Plaintiff injured by reason of board's negligence—Whether board protected by notices—Transport Act 1962, ss 10(1), 43(3). **Burnett v British Waterways Board** [1973] 2 631, CA.

Latent defect—

Evidential burden of proof—Failure of defence to show all proper steps taken to avoid accident—Vehicle—Failure of brakes—Accident caused by failure of brakes—Liability of defendants as owners of vehicle—Defendants relying on plea of latent defect—Burden on defendants to prove all proper steps taken. **Henderson (Widow and Administratrix of the Estate of George Arthur Henderson decd) v Henry E Jenkins & Sons** [1969] 3 756, HL.

Motor vehicle—Collision caused by latent defect in vehicle—Whether owner guilty of negligence in maintenance. **Tan Chye Choo v Chong Kew Moi** [1970] 1 266, PC.

Pleading. *See* Pleading—Defence, *post*.

Practice of trade—

Roof ladder—Plaintiff slipping on roof ladder—Set-up in accord with established practice—Whether conclusive answer to negligence that good practice followed. **Cavanagh v Ulster Weaving Co Ltd** [1959] 2 745, HL.

Volenti non fit injuria. *See* Volenti non fit injuria, *post*.Demolition contractor. *See* Building Contract (Contractor—Demolition contractor—Negligence).

Dog—

Liability of owner or keeper. *See* Animal (Negligence—Domestic animal—Liability of owner or keeper).

Driver of motor vehicle—

Duty to take care. *See* Duty to take care—Driver of motor vehicle, *post*.

Duty to take care—

Animal—

Owner or keeper of domestic animal. *See* Animal (Negligence—Domestic animal—Liability of owner or keeper).

Arising out of foreseeable risk of injury—

Liability for escape of animal onto highway. *See* Animal (Negligence—Highway—Animal straying onto highway).

Assumption of duty by third party—

Bailment of goods—Bailment to company—Assumption of duty of care by director of company with respect to goods—Personal liability of director for damage to goods. **Fairline Shipping Corp'n v Adamson** [1974] 2 967, QBD.

NEGLECTANCE (cont)

Duty to take care (cont)—

Bailee for reward—

Duty to owner of goods—No contractual relation with owner—Carriage of goods by road to order of independent contractors with owners—Goods stolen in transit—Whether duty of care owed by carrier to owner of goods with whom carrier was not in contractual relation. **Lee Cooper Ltd v C H Jeakins & Sons Ltd** [1965] 1 280, QBD.

Bank—

Contractual duty to customer. *See* **Bank** (Duty of care—Contractual duty to exercise care and skill).

Breach of duty—

Burden of proof—Evidential burden—Accident not one that would ordinarily have occurred if defendants had complied with duty—Absence of explanation by defendants showing that they had complied with duty—Defendants owners and managers of supermarket—Duty to keep floors clean and clear of spillage—Customer slipping on yoghurt spilt on floor—No evidence how long yoghurt had been on floor or whether defendants had had reasonable opportunity to clear it up—Whether judge entitled to infer that defendants in breach of duty in absence of explanation by them. **Ward v Tesco Stores Ltd** [1976] 1 219, CA.

Carriage of passengers by rail—

Infant passenger's fall through door of guard's van—Passengers having to pass through van to reach restaurant car—Door capable of being opened by small child. **O'Connor v British Transport Commission** [1958] 1 558, CA.

Conductor of tramcar—

Starting signal given by unauthorised person—Conductor absent from platform—Injury caused to person attempting to board tramcar. **Davies v Liverpool Corpn** [1949] 2 175, CA.

Contributory negligence—

Lack of reasonable care for own safety. *See* **Contributory negligence**—Lack of reasonable care by plaintiff for own safety, *ante*.

Standard of care imposed on plaintiff. *See* **Contributory negligence**—Standard of care imposed on plaintiff, *ante*.

Custody of prisoners—

Liability for acts of prisoners—Borstal trainees—Escape of trainees from custody and control of officers—Trainees working on island—Trainees escaping at night and taking yacht—Collision with, and damage to, second yacht—Whether officers owed duty of care to owners of second yacht—Whether officers responsible for damage caused by act of third persons—Whether officers immune from liability on grounds of public policy. **Home Office v Dorset Yacht Co Ltd** [1970] 2 294, HL.

Damage to property of another—

Consequential loss to plaintiffs—Electric cable severed causing power failure in plaintiffs' factory—Cable not property of plaintiffs—Physical damage leading to loss of profit. **SCM (United Kingdom) Ltd v W J Whittall & Son Ltd** [1970] 3 245, CA.

Title to sue—Loss caused to person having no title to property—Indirect interest in property—Whether duty owed to person not having title to property damaged. **Margarine Union GmbH v Cambay Prince Steamship Co Ltd** [1967] 3 775, QBD.

Dangerous things. *See* **Dangerous things**, *ante*.

Driver of motor vehicle—

Duty to passenger in vehicle—Duty to drive with standard of skill and care to be expected of competent and experienced driver—Relevance of driver's experience—Learner-driver—Driving instructor as passenger—Driving instructor's knowledge of driver's lack of experience—Whether learner-driver under a duty to drive with degree of care of a competent driver. **Nettleship v Weston** [1971] 3 581, CA.

Duty to passenger in vehicle—Emergency stop—Sudden stopping of omnibus to avoid running over dog—Injury to passenger—Whether driver in breach of duty to take reasonable care of passengers. **Parkinson v Liverpool Corpn** [1950] 1 367, CA.

Foreseeable harm. *See* **Duty to take care**—Foreseeable harm—Duty to take care to avoid injury to persons who might foreseeably suffer injury from want of care—Driver of motor vehicle, *post*.

Obstruction above level of road—Omnibus—Overhanging branch—Omnibus brushing branch—Injury through breaking of window—Presumption of negligence—Duty to avoid obstruction above the level of the road. **Radley v London Passenger Transport Board** [1942] 1 433, KBD.

Standard of care—Driving in blackout—Duty to take all necessary steps to minimise danger—Excessive speed—Collision at cross-roads—Duty to minimise inherent risk of operation. **Miller v Liverpool Co-operative Society Ltd** [1941] 1 379, CA.

Traffic lights—Road junction controlled by traffic lights—Lights not functioning properly—Requisite duty of care—Liability of driver for collision. **Ramoo Son of Erulapan v Gan Soo Swee** [1971] 3 320, PC.

Driving examiner—

Supervision of learner-driver—Driver undertaking driving test—Only duty to interfere with driving when necessary to avoid danger to public. **British School of Motoring Ltd v Simms** [1971] 1 317, Assizes.

Economic loss—

Damage to property—Consequential loss to plaintiffs who did not own the property damaged—Defendants damaged hydrant on industrial estate—Water supply cut off for repairs—Loss of a day's work at plaintiff's factory on same estate owing to water being cut off—Plaintiffs having no cause of action against defendants for negligence. **Electrochrome Ltd v Welsh Plastics Ltd** [1968] 2 205, Assizes.

Fine. *See* **Fine**, *post*.

NEGIGENCE (cont)**Duty to take care (cont)—****Foreseeable harm—**

Dangerous machinery—Duty of owner—Permission for use—Portable pneumatic grinding machine hired by sub-contractors from plant hire company—Plaintiff employee of head contractors—Plaintiff given permission by sub-contractors to use machine—Plaintiff injured by grinding wheel of machine shattering—Speed of machine too fast for diameter of grinding wheel—Liability of subcontractors and plant hire company. **Griffiths v Arch Engineering Co (Newport) Ltd** [1968] 3 217, Assizes.

Duty to take care to avoid injury to persons who might foreseeably suffer injury from want of care—Driver of motor vehicle—Duty to other road users—Collision—Shock from noise of collision—Pregnant woman near to scene of collision suffering shock and consequent injury—Whether duty of care owed to woman. **Hay (or Bowhill) v Young** [1942] 2 396, HL.

General practice not to take precautionary measures—Ship—Open unfenced hatch—Seaman injured by falling down an open hatch in grain ship while at sea—General practice of grain ships not to fence hatches while at sea—Whether shipowners in breach of duty of care. **Morris v West Hartlepool Steam Navigation Co Ltd** [1956] 1 385, HL.

Knowledge of previous occurrence causing harm—Escape of substance from premises—Metal foil—Factories on trading estate receiving electric power from same power station—Escape from factory of metal foil blown on to power station causing power failure and consequential damage to other years earlier—Knowledge of defendants that escape of foil could cause power failure—Whether duty to prevent escape. **British Celanese Ltd v A H Hunt (Capacitors) Ltd** [1969] 2 1252, QBD.

Need to prove harm foreseeable—Water—Damage from burst pipe—Defendant having good reason to believe that water turned off. **Tilley v Stevenson** [1939] 4 207, CA.

Reasonable grounds for suspecting danger—Submarine—Torpedoe tube—Test cock made dangerous by contractors' painting—Submarine sinking in consequence—Painting negligent—No reason to suspect danger caused thereby—Liability of contractors. **Woods v Duncan, Duncan v Hambrook, Duncan v Cammell Laird & Co Ltd** [1946] 1 420, HL.

Unforeseen danger—Spilling of boiling water from tea urn—Water scalding children in shop—Hold of bearer of urn slipping and water thereby spilt—Whether danger foreseeable—Whether a duty to clear children out of way. **Glasgow Corp v Muir** [1943] 2 44, HL.

Hospital. *See* **Hospital** (Duty to take care).

Information or advice. *See* **Information or advice, post**.

Knowledge of risk—

Risk so small as to be disregarded—Defendant occupying land adjoining highway—Children permitted to use land for play with a football—Land abutting on highway and separated only by low wall—Motor cyclist on highway injured as result of football kicked over wall on to highway by child—Whether risk to injury to persons using highway so small that it could be safely disregarded. **Hilder v Associated Portland Cement Manufacturers Ltd** [1961] 3 709, QBD.

Local education authority. *See* **Education** (Local education authority—Negligence).

Owner of premises. *See* **Occupier's liability**.

Owner of realty—

Duty to subsequent purchaser in respect of hidden defects—Builder—Negligence in construction of house—Foundations badly laid so as to create hidden defect—Defective foundations causing damage to house after purchase by subsequent purchaser—Builder owing duty of care to a purchaser of the house—Builder liable for negligence to subsequent purchaser—Immaterial that builder owner of realty. **Dutton v Bognor Regis United Building Co Ltd** [1972] 1 462, CA.

Duty to subsequent purchaser in respect of hidden defects—Builder—Negligent construction of house—Liability in tort to person injured. **Otto and Otto v Bolton and Norris** [1936] 1 960, KBD.

Persons to whom duty owed—

Blind persons on highway—Duty of care extends to the blind when it is reasonably foreseeable that they may use highway—Trench dug along pavement in London—Guard at end of trench inadequate and an obstruction to a blind person, but a sufficient guard to protect normal road users—Reasonably foreseeable that blind person might use city pavement—Assumption that blind person exercises proper care to protect himself—Breach of duty to blind person injured by fall caused by the obstruction. **Haley v London Electricity Board** [1964] 3 185, HL.

Building operations—Liability of contractor to servant of sub-contractor—Retention by contractor of control over manner of performance of work—Building (Safety, Health and Welfare) Regulations 1948 (S I 1948 No 1145), reg 4, reg 31(1). **Mulready v J H W Bell Ltd** [1953] 2 215, CA.

Building operations—Liability of sub-contractor to servant of contractor—Dangerous scaffolding erected or altered by sub-contractor—Contractor responsible for scaffolding. **Simmons v Bovis Ltd** [1956] 1 736, Assizes.

Duty owed only to those whose persons or property may be foreseeably injured—Escape of virus from research premises leading to infection of cattle in the vicinity—Closing of cattle markets—Consequent economic loss to auctioneers who did not own cattle—Whether auctioneers within scope of duty owed by research institute. **Weller & Co v Foot and Mouth Disease Research Institute** [1965] 3 560, QBD.

Premises open to public—

Danger from rush of people—Duty to institute crowd control—Local authority—Air-raid shelter—Steps down to shelter—Steps uneven, inadequately illuminated and without centre hand-rail—Duty of local authority as occupier of premises to guard against danger from rush of people. **Annie Amelia Baker v Bethnal Green Borough Council** [1945] 1 135, CA.

NEGLIGENCE (cont)

Duty to take care (cont)—

Prevention of theft—

Theatrical producer—Failure of producer to take reasonable care to prevent theft—Actor's clothing stolen from dressing room—Liability of producer. **Deyong v Shenburn** [1946] 1 226, CA.

Prison authorities. *See* **Prison** (Negligence—Prison authorities—Duty to prisoner).

Professional person—

Exercise of reasonable skill and care. *See* Professional person—Duty to exercise reasonable skill and care, *post*.

Proximity of relation—

Building contract—Safety consultants—Consultants engaged by contractors—Failure to give advice which would have prevented accident to labourer employed by contractors—Liability of consultants in damages to labourer—Apportionment of liability between contractors and consultants—Liability of consultants to contractors for damages for breach of contract. **Driver v William Willett (Contractors) Ltd** [1969] 1 665, Assizes.

Constructional company having conduct of work—Sub-contractors. *See* **Building** (Construction work—Negligence—Sub-contractors liable to servant of other sub-contractors—Liability of constructional company, having conduct of work for building owner, to servant of sub-contractors).

Railway—

Duty to passengers and invitees. *See* **Railway**—Duty to passengers and invitees, *post*.

Footpath crossing railway line—Stile erected at edge of crossing to line—Stile in disrepair—Child walking through stile on to line—Child hit by train—Whether railway under duty to take care in relation to maintenance of stile—Whether liable for child's injuries. **Thomas v British Railways Board** [1976] 3 15, CA.

Reliance on defendant—

Motor vehicles—Motor cyclist leading second motor cycle—Agreement by leading one to act as pilot to second motor cyclist carrying pillion-rider—Accident due to pilot accidentally leaving road—Whether injured pillion-rider entitled to recover damages from driver of first motor cycle—Undertaking by first driver imposing duty not to put second motor cycle in danger. **Sharp v Avery and Kerwood** [1938] 4 85, CA.

Rescuer—

Danger to property—Intervention to avert danger to property natural consequence of negligence—Fire breaking out owing to defendant's negligence—Fire constituting danger to property—Plaintiff injured trying to extinguish fire—Whether entitled to damages. **Hyett v Great Western Ry Co** [1947] 2 264, CA.

Duty owed by master to servant—Rescue of servant—Duty to rescuer—Negligence placing workmen in imminent peril from gas on their descending a well—Doctor descending well to rescue them—Whether duty of care owed by master to servant extended to doctor. **Ward v T E Hopkins & Son Ltd** [1959] 3 225, CA.

Mental shock—Voluntary assistance in rescue work—Foreseeability—Railway collision causing many casualties among passengers—Rescuer voluntarily assisting in rescue work—Rescuer subsequently suffering prolonged mental shock—Defendants admitting liability for collision—Whether under duty of care to rescuer—Whether mental shock to rescuer reasonably foreseeable. **Chadwick & British Transport Commission** [1967] 2 945, QBD.

Railway—Negligent driving of trolley by railway employee—Child trespassing on line—Stationmaster killed in rescuing child—Liability of railway. **Videan v British Transport Commission** [1963] 2 860, CA.

Safe system of working. *See* **Safe system of working** (Reasonable care not to expose employee to unnecessary risk).

Special relationship giving rise to duty of care—

Information or advice. *See* Information or advice—Special relationship giving rise to duty of care, *post*.

Spectator at game or competition—

Child—No duty to protect child spectator against danger incidental to game—Ice-hockey—Child spectator injured by puck—Implied contract—Reasonable care for safety—Foreseeable danger incident to entertainment. **Murray v Haringay Arena Ltd** [1951] 2 320, CA.

Duty not to show reckless disregard for spectator's safety—Duty not to make error of judgment which cannot be regarded as reasonable—Competitor in race—Motor cycle scramble—Competitor going all out to win. **Wilks v Cheltenham Home Guard Motor Cycle and Light Car Club** [1971] 2 369, CA.

Standard of care—

Statutory regulations—Safety—Circumstances not quite within regulations—Whether regulation relevant in determining standard of care. **Chipchase v British Titan Products Co Ltd** [1956] 1 613, CA.

Statement—

Careless statement causing damage to person or property—Statements actionable in negligence—Instructions negligently issued by architect to bricklayer resulting in bricklayer's personal injuries. **Clayton v Woodman & Son (Builders) Ltd** [1962] 2 33, CA.

Information or advice. *See* Information or advice, *post*.

Traffic signal. *See* Duty to take care—Traffic signal, *post*.

NEGLIGENCE (cont)

Duty to take care (cont)—

Statutory duty—

Relation of statutory duty to common law duty—Factory—Protection of eyes—Melting and founding non-ferrous metals—Employers under statutory duty to provide goggles to employee—Employers complying with statutory duty—Employers failing to instruct and persuade employee to wear goggles—Whether employers in breach of duty to provide reasonably safe system of work—Whether compliance with statutory duty absolving employers from breach of common law duty—Non-Ferrous Metals (Melting and Founding) Regulations 1962 (S 1 1962 No 1667), reg 13(1). **Bux v Slough Metals Ltd** [1974] 1 262, CA.

Statutory powers—

Local authority—Building operations—Legislation giving authority control over building operations—Byelaws requiring approval of foundations of building by authority's building inspector before being covered up—Inspector failing to make proper inspection before giving approval—Foundations laid by builder of house inadequate to carry load of building—Consequent damage to structure of house occurring after house coming into hands of subsequent purchaser—Liability of authority for inspector's negligence. **Dutton v Bognor Regis United Building Co Ltd** [1972] 1 462, CA.

Traffic signal—

Duty owed to driver—Signal to car driver to proceed—Driver acting on signal—Collision inevitable after driver proceeds—Duty of care of third party—Duty of care of driver. **Grange Motors (Cymbran) Ltd v Spencer (Post Office, Third Party)** [1969] 1 340, CA.

Tree adjacent to highway—

Duty of occupier to property—Standard of care—Elm tree adjoining road—Fall on passing car—Fall due to disease—Duty of reasonable and prudent landowner—Knowledge to be expected of landowner as to likelihood of trees suffering from disease. **Caminer v Northern and London Investment Trust Ltd** [1950] 2 486, HL.

Knowledge of dangerous condition—Duty of occupying landowners—Beech trees growing on property alongside highway—Portion of tree, old and top-heavy and showing some indications of unhealthiness falling across highway—Collision caused between vehicles on the road at the time—Whether breach of duty of care by occupying landowner. **Quinn v Scott** [1965] 2 588, QBD.

Trespasser—

Duty of occupier to. *See* **Occupier's liability** (Trespasser).

Highway—Duty owed by user of highway to trespasser on highway—Lorry laden with container driven under too low a bridge—Boy running behind lorry injured by fall of container—Extent of duty of care required of user of highway—Boy technically a trespasser on highway—Duty not confined to people defendants could reasonably expect to be on highway. **Farrugia v Great Western Ry Co** [1947] 2 565, CA.

Economic loss—

Duty to take care. *See* **Duty to take care—Economic loss**, ante.

Estoppel. *See* **Estoppel** (Negligence)

Exceptions—

Bill of lading—

Neglect of agents or servants. *See* **Shipping** (Bill of lading—Exceptions—Neglect of agents or servants).

Exclusion of liability—

Carriage by sea—

Passengers. *See* **Shipping** (Passengers—Carriage by sea—Negligence—Exclusion of liability).

Exception clause. *See* **Contract** (Exception clause—Negligence).

Passenger in vehicle. *See* **Volenti non fit injuria**—Consent to risk of injury—Agreement to exclude liability—Passenger in vehicle, *post*.

Generally. *See* **Defence**—Exclusion of liability, *ante*.

Passenger in vehicle—

Agreement to exclusion of liability. *See* **Volenti non fit injuria**—Consent to risk of injury—Agreement to exclude liability—Passenger in vehicle, *post*.

Fatal Accidents Acts. *See* **Fatal accident**

Fire—

Damage to neighbouring premises—

Heat, smoke and water used to put out fire—Fire started negligently—Water used to put out fire escaping on to neighbouring premises—Damage to neighbouring premises caused to neighbouring premises by heat and smoke—Fires Prevention (Metropolis) Act 1774, s 86. **Mulholland and Tedd Ltd v Baker** [1939] 3 253, KBD.

Duty to occupier of neighbouring land—

Failure to put out fire—Fire caused by lightning—Steps initially taken to deal with source of danger—Subsequently fire left to burn itself out—Negligence in leaving fire to burn itself out—Escape of fire to adjacent premises—Fires so escaping did not accidentally begin—Fires Prevention (Metropolis) Act 1774, s 86. **Goldman v Hargrave** [1966] 2 989, PC.

Reasonable steps to extinguish fire—Tree struck by lightning—Burning tree felled—Fire left to burn out—Revival—Escape to adjacent premises—Liability of occupier—Action necessary to put out fire within capacity and resources. **Goldman v Hargrave** [1966] 2 989, PC.

NEGLECTANCE (cont)

Fire (cont)—

Escape to adjoining premises—

Burden of disproving negligence—Liability of occupier as such—Non-natural user of land by occupier—Yard used as store for machinery greased and stacked in wooden cases pending sale—Serious fire risk to adjoining occupiers—Destruction by fire of neighbour's hedge and garden plants—Whether burden of disproving negligence on occupier—Fires Prevention (Metropolis) Act 1774, s 86. **Mason v Levy Auto Parts of England Ltd** [1967] 2 62, Assizes.

Independent contractor—Liability of occupier for acts of independent contractor—Fires Prevention (Metropolis) Act 1774, s 86. **Balfour v Barty-King (Hyder & Sons (Builders) Ltd third parties)** [1957] 1 156, CA.

Liability of occupier as such—Rag ignited by occupier used by him to ignite bird's nest—Fire spreading from nest to adjoining premises. **Sturge v Hackett** [1962] 3 166, CA.

Liability of occupier for negligence of third party—Liability for acts of third parties other than strangers—Demolition of bungalows on site by contractors—Site owned by local authority—Local authority requesting Ministry of Works to remove bungalows—Contractors engaged by Ministry—Contractors forbidden to burn rubbish on site by terms of agreement with Ministry—Contractors starting fire in accordance with usual practice—Sparks causing fire on adjoining premises—Whether local authority occupiers of site—Whether contractors strangers. **H & N Emanuel Ltd v Greater London Council** [1971] 2 835, CA.

Flood—

Occupier's liability—

Factory flooded in exceptional storm. *See* **Occupier's liability** (Negligence—Factory flooded in exceptional storm).

Foreseeable harm—

Duty of care. *See* **Duty to take care**—Foreseeable harm, *ante*.

Remoteness of damage. *See* **Remoteness of damage**—Foreseeable harm, *post*.

Gas undertakers. *See* **Gas** (Undertakers—Negligence).

Hairdresser—

Failure to exercise care and skill—

Permanent waving—Bleached hair—Failure of hairdresser to have regard to danger of permanent waving bleached hair. **Dobbin v Waldorf Toilet Saloons Ltd** [1937] 1 331, Assizes.

Harbour authority. *See* **Harbour** (Harbour authority—Negligence).

Highway—

Breach of Highway Code—

Contributory negligence. *See* **Contributory negligence**—Breach of Highway Code, *ante*.

Child—

Allurement—Lorry on highway constituting an allurement. *See* **Children**—Allurement—Lorry on highway constituting an allurement, *ante*.

Collision between vehicles—

Contributory negligence. *See* **Negligence** (Contributory negligence—Collision between vehicles on road).

Duty of highway authority—

Icy patch on road—Warning of danger—Whether highway authority under duty to give warning. **Burton v West Suffolk County Council** [1960] 2 26, CA.

Tree overhanging highway—Injury to passenger in passing omnibus—Liability of highway authority. **Hale v Hants & Dorset Motor Services Ltd** [1947] 2 628, CA.

Maintenance. *See* **Highway** (Maintenance—Negligence).

Opening of vehicle door—

Injury to passer-by—Injury to cyclist by driver opening door of stationary motor vehicle—Highway Act 1835, s 78. **Shears v Matthews** [1948] 2 1064, KBD, **Watson v Lowe** [1950] 1 100, KBD.

Parking of vehicle—

Collision—Vehicle parked near blind corner at night—Vehicle having lights on—Room for other vehicles to pass—Second vehicle rounding corner and colliding with rear of stationary vehicle—Passenger in second vehicle injured—Liability of driver of stationary vehicle to passenger—Whether bad parking capable of giving rise to liability in negligence. **Chop Seng Heng v Thevannasan S/O Sinnapan** [1975] 3 572, PC.

Pavement—

Proximity of vehicle to edge of pavement—Injury to pedestrian on pavement by van passing so close to kerb that door-handle passed over pavement. **Watson v Thomas S Whitney & Co Ltd** [1966] 1 122, CA.

Unguarded opening. *See* **Highway**—Unguarded opening on pavement, *post*.

Traffic—

Giving way—Priority due to traffic coming on driver's right. **MacIntyre v Coles** [1966] 1 723, CA.

Tree adjacent to highway—

Duty to take care. *See* **Duty to take care**—Tree adjacent to highway, *ante*.

Trespasser—

Duty of care to trespasser. *See* **Duty to take care**—Trespasser—Highway, *ante*.

Unguarded opening on pavement—

Opening to coal-cellar left unguarded during delivery of coal to premises—Pedestrian stepping into hole—Liability of coal merchant and occupier of premises—Law Reform (Married Women and Tortfeasors) Act 1935, s 6(2). **Daniel v Rickett, Cockerell & Co Ltd and Raymond** [1938] 2 631, KBD.

Unlighted vehicle—

Danger to other traffic—Unlighted motor cycle stationary at night—Negligence in failing to take all reasonable precautions to prevent danger to other traffic. **Hill-Venning v Beozant** [1950] 2 1151, CA.

NEGLECTANCE (cont)

Highway (cont)—

Unlighted vehicle (cont)—

Presumption of negligence—Rebuttal of presumption—Adequate lighting from street lamp—Unlighted motor vehicle stationary on dark night—Prima facie evidence of negligence rebutted since street lamp nearby afforded ample warning to drivers keeping proper look out. **Parish v Judd** [1960] 3 33, QBD.

Presumption of negligence—Unlighted motor vehicle stationary on dark night—Prima facie evidence of negligence, there being no street lighting—Rebuttal of presumption of negligence. **Moore v Maxwells of Emsworth Ltd** [1968] 2 779, CA.

Proper look-out—Collision despite plaintiff keeping proper look-out—Plaintiff motor cyclist colliding with unlighted stationary car. **Stewart v Hancock** [1940] 2 427, PC.

Immunity from suit—

Arbitrator—

Person acting in arbitral capacity—Immunity from liability for failure to exercise care and professional skill—Circumstances in which professional man acting in arbitral capacity—Determination of dispute—Agreement by parties to accept determination as final—Architect—Interim certificate—Building contract—Architect appointed to supervise works under building contract between employer and contractor—Contract in RIBA form—Duty of architect to act fairly between employer and contractor—Interim certificate issued by architect over-certifying amount due to contractor—Whether architect acting in arbitral capacity in issuing certificates—Whether immune from liability to employer for negligent over-certification. **Sutcliffe v Thackrah** [1974] 1 859, HL.

Valuer—

Valuation of property—Valuation determining price to be paid for property under contract of sale—Liability of valuer to parties to sale for negligent valuation—Auditor appointed to value shares as expert and not as arbitrator—Shareholder selling shares to controlling shareholder in company on basis of valuation—Company prospectus subsequently issued by same auditor—Value placed on shares six times greater than value previously given by auditor to shareholder—Whether shareholder having cause of action in negligence against auditor. **Arenson v Casson Beckman Rutley & Co** [1975] 3 901, HL.

Indemnity. *See* Indemnity (Negligence).

Information and advice—

Professional person—

Duty to exercise reasonable skill and care—Valuation of property. *See* Professional person—Duty to exercise reasonable skill and care—Estate agent—Valuation of property, *post*.

Information or advice—

Assumption of liability—

Statutory duty to give information—Register of local land charges—False certificate issued by employee of local authority—Conclusiveness of certificate resulting in loss of incumbrancer's rights—Whether employee owed duty of care to incumbrancer. **Ministry of Housing and Local Government v Sharp** [1970] 1 1009, CA.

Causing or contributing to damage—

Advice to workman. *See* Causation—Breach of duty causing or contributing to damage—Advice to workman, *ante*.

Damage giving rise to liability—

Danger to life, limb or health—Valuation of property—Valuer instructed by promoters of company to be formed—Valuation of property to be acquired by company—Duty to company—Liability for negligent overvaluation—Whether liability confined to negligence resulting in danger to life, limb or health. **Old Gate Estates Ltd v Toplis & Harding & Russell** [1939] 3 209, KBD.

Hire-purchase agreement—

Failure to register—Estoppel. *See* Estoppel (Negligence)—Need to establish duty of care in order to found estoppel by negligence—Hire-purchase agreement—Registration).

Knowledge third party might rely on advice—

Accountant—Preparation of company's accounts—Duty to prospective investor—Knowledge that accounts to be shown to prospective investor in company—Accounts failing to give true statement of financial position of company—Liability of accountant to investor. **Candler v Crane Christmas & Co** [1951] 1 426, CA.

Pre-contract negotiations—

Statement made by one party to other in course of negotiations—Statement inducing other party to enter agreement—Whether fact that statement made in course of pre-contract negotiations excluding duty to take care in making statement. **Esso Petroleum Co Ltd v Mardon** [1976] 2 5, CA.

Reliance on skill and judgment—

Knowledge of informant or adviser—Knowledge that he was being trusted or that reliance was placed on his skill or judgment—Bankers—Advice as to financial stability of company—Whether duty to exercise care imposed on person giving information or advice. **Hedley Byrne & Co Ltd v Heller & Partners Ltd** [1963] 2 575, HL.

Likelihood of physical injury—Statement by professional adviser—No need to prove reliance on advice by plaintiff where negligence in giving advice on safety of buildings etc likely to result in bodily injury—Surveyor—Building inspector—Failure to make proper inspection of foundations of house before giving byelaw approval—Foundations inadequate—Subsequent damage to structure of building caused by settlement—Liability for cost of repairs. **Dutton v Bognor Regis United Building Co Ltd** [1972] 1 462, CA.

Professional advice—Advisor not engaged in business or profession of giving advice on subject-matter of enquiry—Whether duty to exercise care imposed on advisor. **Mutual Life & Citizens' Assurance Co Ltd v Evatt** [1971] 1 150, PC.

Valuer—Valuation and survey of landed property—House purchased in reliance on surveyor's report—Measure of damages. **Philips v Ward** [1956] 1 874, CA.

NEGLIGENCE (cont)

Information or advice (cont)—

Reply to enquiry—

Credit-worthiness of third party—Representation of credit-worthiness of purchaser—Wholesaler and commission agent's buyer purchasing in vegetable market for third party—Negligence by manager of wholesaler in not informing buyer about state of account of third party with wholesaler—Whether wholesaler owed duty of care to prospective vendor to the third party. **W B Anderson & Sons Ltd v Rhodes (Liverpool) Ltd** [1967] 2 850, Assizes.

Special relationship giving rise to duty of care—

Reliance on adviser's knowledge and expertise—Company engaged in distribution of petrol—Negotiations by company to let new petrol station—Forecast by company of prospective petrol sales from station—Forecast inducing tenant to enter into tenancy agreement—Forecast inaccurate—Whether company under duty of care to tenant. **Esso Petroleum Co Ltd v Mardon** [1976] 2 5, CA.

Intoxicated driver of vehicle—

Passenger—

Consent to risk of injury. *See* Volenti non fit injuria—Knowledge of risk—Passenger in car—Intoxicated driver, *post*.

Contributory negligence. *See* Contributory negligence—Road accident—Passenger in car—Passenger knowing that driver under influence of drink, *ante*.

Intituee—

Ship—

Injury to employee of independent contractor during ship's trial—Ship under command of employee of shipbuilders—Negligence of purchasers' servants on board—Common interest of shipbuilders and purchasers in success of trial—Control of purchasers' servants by shipbuilders' employee—Liability of shipbuilders. **Hobson v Bartram and Sons Ltd** [1950] 1 412, CA.

Knowledge of danger—

No reason to suspect danger—

Water board—Pipe laid under highway—Leakage in pipe—Paving-stones on footpath affected—Water board not aware of danger—Pedestrian injured by movement of paving stone affected by leakage—Whether board liable in negligence. **Longhurst v Metropolitan Water Board** [1948] 2 834, HL.

Landlord's liability—

Exemption from liability—

Defective state of demised premises—Yard attached to demised premises over which tenants had right to pass—Fall of chimneystack due to want of repair—Tenant's daughter injured in yard by fall—Whether yard part of demised premises—Whether landlord exempted from liability. **Taylor v Liverpool Corp** [1939] 3 329, KBD.

Operations carried out by landlord on demised premises—Duty of care to persons on premises—gratuitous operation at request of tenant—Installation of domestic boiler—Boiler in dangerous condition—Explosion injuring tenant's daughter—Whether landlord absolved from liability by virtue of his status as landlord. **Ball v London County Council** [1949] 1 1056, CA.

Last opportunity—

Contributory negligence. *See* Contributory negligence—Last opportunity of avoiding accident, *ante*.

Latent defect—

Defence. *See* Defence—Latent defect, *ante*.Res ipsa loquitur. *See* Res ipsa loquitur—Latent defect, *post*.Liability of master. *See* Master and servant (Liability of master—Negligence).Lighting of film. *See* Cinema (Film—Production—Lighting—Negligence).

Local government—

Loss or deficiency—

Surcharge—Audit. *See* Local government (Audit—Duty of auditor to surcharge amount of any loss or deficiency on any person by whose negligence or misconduct loss or deficiency incurred—Negligence).

Machinery—

Dangerous machinery—

Foreseeable harm. *See* Duty to take care—Foreseeable harm—Dangerous machinery, *ante*.

Manslaughter. *See* Criminal law (Manslaughter—Negligence).

Manufacturer's liability—

Opportunity for intermediate examination—

Latent defect—Breakage of ring causing death of workman—Examination by workman's employers would have revealed defect—Whether manufacturers liable for death. **Dransfield v British Insulated Cables Ltd** [1937] 4 382, KBD.

Medical practitioner—

Generally. *See* Medical practitioner (Negligence).

Hospital—

Liability of hospital.

Mental shock—

Rescuer—

Duty to rescuer. *See* Duty to take care—Rescuer—Mental shock, *post*.

Misrepresentation as to person's credit. *See* Misrepresentation (Misrepresentation as to person's credit—Negligence).

Mortgagee—

Exercise of power of sale. *See* Mortgage (Sale—Duty of mortgagee).

Nuisance—

Need to prove negligence. *See* Nuisance (Negligence—Need to prove).

NEGLIGENCE (cont)

Nurse—

Hospital—

Liability of hospital. *See* **Hospital** (Liability for negligence of members of staff—Nurses).Occupier. *See* **Occupier's liability**.

Passenger—

Injuring third party—

Motor insurance policy. *See* **Motor insurance** (Using vehicle or causing or permitting vehicle to be used on road without policy being in force—Passenger's negligence injuring third party).

Personal injury—

Damages. *See* **Damages** (Personal injury).Limitation of action. *See* **Limitation of action** (Fatal accident—Material fact outside knowledge of deceased).

Pleading—

Breach of statutory duty only pleaded—

Finding of liability based on negligence—Whether finding maintainable. **Morris v National Coal Board** [1963] 3 644, CA.

Defence—

Act of third party—Defendants relying on act of third party—Necessary to plead specific act relied on—Ground of defence that tool was supplied by reputable suppliers—RSC, Ord 19, r 4, r 15. **Davie v New Merton Board Mills Ltd** [1956] 1 379, QBD.Insufficiency. *See* **Practice** (Trial—Departure from case originally pleaded—Particulars of negligence).Particulars. *See* **Pleading** (Particulars—Negligence).Res ipsa loquitur. *See* **Res ipsa loquitur**—Pleading, *post*.

Stranding of vessel—

Unseaworthiness—Need to plead—Damage arising from stranding of vessel—Pleading of negligence in navigation—No allegation of unseaworthiness in statement of claim—Whether plaintiffs entitled to rely on negligence in sending ship to sea. **Esso Petroleum Co Ltd v Southport Corp'n** [1955] 3 864, HL.

Practice of trade—

Defence. *See* **Defence**—Practice of trade, *ante*.Predominant cause. *See* **Causation**—Predominant cause, *ante*.

Presumption of negligence—

Res ipsa loquitur. *See* **Res ipsa loquitur**, *post*.Prison authorities. *See* **Prison** (Negligence—Prison authorities).

Professional person—

Damages—

Solicitor. *See* **Damages** (Measure of damages—Negligence—Solicitor).

Duty to exercise reasonable skill and care—

Estate agent—Valuation of property—Advance by way of mortgage on footing of valuation—Valuation excessive—Reliance on valuation by mortgagee—Measure of damages. **Baxter v F W Gapp & Co Ltd** [1939] 2 752, CA.Minor surgical operation—Jeweller undertaking minor surgical operation often done by jewellers—Ear-piercing—Jeweller only required to show skill of jewellers doing that work and not skill of doctor. **Philips v William Whiteley Ltd** [1938] 1 566, KBD.Steps to be taken to fulfil duty depending on circumstances—Consultant engineers—Design of building—Building required for purpose of storing oil drums and moving them about by fork-lift trucks—Knowledge of purpose for which building required—New mode of construction—Warning of danger of vibrations in code of practice interpreted too narrowly—Design rendering floor of warehouse inadequate for its purpose—Engineers liable for breach of duty. **Greaves & Co (Contractors) Ltd v Baynham Meikle and Partners** [1975] 3 99, CA.Hairdresser. *See* **Hairdresser**, *ante*.Solicitor. *See* **Solicitor** (Negligence).

Surgeon—

Operation—Duty to search for swabs—Duty to count swabs—Swab left in patient—Whether surgeon under a duty to count or search for swabs. **Mahon v Osborne** [1939] 1 535, CA.Operation—Res ipsa loquitur—Evidence sufficient to raise presumption. *See* **Res ipsa loquitur**—Evidence sufficient to raise presumption—Surgical operation).

Proof of negligence—

Collision between vehicles on road—

Drivers equally to blame—Right of owner of one car to recover in full against driver of other car—Collision at cross-roads—Roads of equal status—Inference that both drivers equally to blame—Car hired from plaintiff by driver—Defendant driver of other car—Plaintiff's right to recover full damages from defendant. **France v Parkinson** [1954] 1 739, CA.

Conviction in criminal court—

Burden of proof. *See* **Burden of proof** (Civil action—Conviction as evidence—Negligence).

Duty of judge—

Contradictory allegations in claim and counterclaim—No decision which was proved—Claim and counterclaim dismissed—Whether judge entitled to dismiss claim and counterclaim on ground he was unable to decide which was right—Whether new trial should be ordered. **Bray v Palmer** [1953] 2 1449, CA.

Expert evidence—

Plaintiff not bound to show how accident happened—Reliance on expert evidence—No direct evidence of how accident happened—Plaintiff by competent evidence showing that his explanation of what happened the more probable one. **Dawson v Murex Ltd** [1942] 1 483, CA.

NEGLIGENCE (cont)

Radiographer—

Hospital—

Liability of hospital. *See* **Hospital** (Liability for negligence of members of staff—Radiographer).

Railway—

Crossing—

Duty to persons using crossing—Closing of gates. *See* **Railway** (Accommodation works—Accommodation crossing—Extent of obligations of railway authority—Closing of gates).

Duty to passengers and invitees—

Liability of passenger to other persons—Opening of carriage door—Door striking person on platform—Passenger boarding moving train—Open door striking porter on platform. **Booker v Wenborn** [1962] 1 431, CA.

Open door of guard's van—Plaintiff on platform injured by open door when train was starting—Whether any duty to shut door before departure of train. **Hare v British Transport Commission** [1956] 1 578, QBD.

Safety of station platform—Duty of railway to provide safe means of egress from train—Snow on platform following sudden snowstorm—Delay in sanding and salting—Porter responsible otherwise urgently engaged—Passenger injured by slipping on snow when alighting from train—Whether railway executive having exercised reasonable care. **Tomlinson v Railway Executive** [1953] 1 1, CA.

Safety of station platform—Passenger slipping on patch of oil—No delay in taking precautionary measures. **Blackman v Railway Executive** [1953] 2 323, CA.

Shutting of doors before departure—Underground train—Train departing with open doors—Passenger thrown out of open door in consequence of motion of train—Whether company's servants under a duty to shut doors before departure of train. **Brookes v London Passenger Transport Board** [1947] 1 506, KBD.

Engine-driver—

Duty to persons on line—Extent of duty of care to railway employees on the line. **Trznadel v British Transport Commission** [1957] 2 196, CA.

Licensees on railway track—

Duty to licensees—Involuntary encroachment on track. *See* **Occupier's liability** (Duty to licensee—Involuntary encroachment—Railway track).

Reliance on skill and judgment—

Information or advice. *See* **Information or advice**—Reliance on skill and judgment, *ante*.

Remoteness of damage—

Direct result of breach of duty—

Foreseeability—Need to prove that risk of damage foreseeable—Not sufficient to prove damage direct result of breach if damage not foreseeable. **The Wagon Mound (No 2)** [1966] 2 709, PC.

Foreseeable harm—

Criterion of damage for which defendant liable—Criterion for culpability and for compensation the same—Test whether damage could reasonably have been foreseen. **Overseas Tankship (UK) Ltd v Morts Dock & Engineering Co Ltd** [1961] 1 404, PC.

Damage foreseeable but not extent—Dangerous chattels—Chemical liable to explode on contact with water—No adequate research by seller—No adequate warning given by seller to purchaser—Purchaser entitled to expect adequate warning—Explosion causing death and extensive destruction of property—Whether damage too remote—Whether seller liable. **Vacwell Engineering Co Ltd v BDH Chemicals Ltd (formerly British Drug Houses Ltd)** [1970] 3 553, CA.

Damage suffered entirely different in kind to that foreseeable—Rare disease—Agricultural worker contracting Weil's disease—Little-known disease carried by rats rarely contracted by humans—Disease different in kind from other infections transmitted by rats—Other infections from rats foreseeable—Whether employer liable. **Tremain v Pike** [1969] 3 1303, Assizes.

Physical condition of victim—Personal injury—Tortfeasor bound to take victim as he finds him—Cancer developing from pre-malignant condition—Liability of defendant for damage resulting from death. **Smith v Leech Brain & Co Ltd** [1961] 3 1159, CA.

Precise nature of injury not reasonably foreseeable—Type of accident reasonably foreseeable but actual development of events not reasonably foreseeable—Allurement—Children exploring shelter covering manhole uncovered for repairs in street—Shelter unattended but marked by lighted paraffin lamps—Lamp accidentally kicked into manhole by child—Explosion—Child injured by burns—Accident by burns reasonably foreseeable, but explosion not reasonably foreseeable—Liability. **Hughes v Lord Advocate** [1963] 1 705, HL.

Precise nature of injury not reasonably foreseeable—Type of injury reasonably foreseeable—Frostbite—Plaintiff required by employers to make long journey in unheated motor van in severe weather conditions—Some injury to health reasonably foreseeable—Plaintiff permanently injured by frostbite—Liability of employers. **Bradford v Robinson Rentals Ltd** [1967] 1 267, Assizes.

Type of accident not foreseeable—Different accident foreseeable—Dropping of object into molten liquid causing unforeseeable eruption injuring plaintiff—Dangerous splashing foreseeable—Plaintiff not injured by splashing, but injured by eruption after danger of splashing had passed. **Doughty v Turner Manufacturing Co Ltd** [1964] 1 98, CA.

Res ipsa loquitur—

Accident raising presumption of negligence—

Cause of accident unexplained—Inference of negligence from occurrence of accident—Motor cycle scramble—Motor cycle and competitor veering off course across safety fence into spectators—Absence of evidence as to how accident occurred—Liability of competitor—Fence not under control of competitor—Accident consistent with misjudgment not amounting to negligence. **Wilks (formerly an infant) v The Cheltenham Home Guard Motor Cycle and Light Car Club** [1971] 2 369, CA.

NEGLIGENCE (cont)

Res ipsa loquitur (cont)—

Accident raising presumption of negligence (cont)—

Event more likely to have been caused by negligence than not—Omnibus—Accident due to tyre burst—Impact fracture of tyre—Supervision of condition of tyre—Failure of owners of vehicle to show that they had used all due diligence—Owners liable although not possible to affirm fracture would have been discovered by due diligence. **Barkway v South Wales Transport Co Ltd** [1950] 1 392, HL.

Application of doctrine—

Complicated surgical operation—Swab left in patient—Ordinary reasonable man knowing facts unable to say what had happened was due to negligence—Whether doctrine of res ipsa loquitur applicable. **Mahon v Osborne** [1939] 1 535, CA.

Control of defendant over events—

Acts of independent contractor—Contractors engaged on conversion of building—Building adjacent to highway—Conversion being carried out on behalf of occupier—Adjacent building being re-constructed by contractors for occupiers—Unexplained fall of brick on passer-by—Res ipsa loquitur raising presumption against occupier and contractors—Negligence disproved. **Walsh v Holst & Co Ltd** [1958] 3 33, CA.

Railway train—Security of doors—Infant passenger falling through door of corridor train in motion—Opening of door unexplained—Whether doctrine of res ipsa loquitur applicable—Whether doors to be regarded as under control of railway company. **Easson v London & North Eastern Ry Co** [1944] 2 425, CA.

Evidence required to discharge onus on defendant—

Defendant's evidence that he was not negligent—Sufficiency—Evidence required to discharge onus—Defendant driving hired motor car—Unexplained swerve by motor car being driven at 60 mph on motorway—Defendant's evidence that he was not negligent in any way—Whether sufficient to discharge onus. **Ludgate v Lovett** [1969] 2 1275, CA.

Evidence that accident could have happened without negligence—Workman employed by defendant fatally injured by explosion of gas apparatus on defendant's premises—Expert evidence that accident could have happened without negligence of defendant—Whether onus discharged. **Moore v R Fox & Sons** [1956] 1 182, CA.

Evidence that defendant not negligent—No need for defendant to prove how and why accident happened—Sufficient for plaintiff to satisfy court he personally was not negligent. **Woods v Duncan, Duncan v Hambrook, Duncan v Cammell Laird & Co Ltd** [1946] 1 420, HL.

Expert evidence—No reasonable steps available to avoid danger—Explosion caused by escape of gas from underground metal gas main—Expert evidence that fracture of pipe due to frost, but pipe in good condition and no reasonable steps available to safeguard public from consequences of such fractures—Negligence not established. **Pearson v North Western Gas Board** [1968] 2 669, Assizes.

Explanation of accident—Finding of trial judge—Explanation excluding negligence—Pile-driving operations—Collapse of crane—Injury to servant—Finding by judge that collapse caused by ground giving way—Burden on defendant discharged. **Swan v Salisbury Construction Co Ltd** [1966] 2 138, PC.

Explanation of res not requiring positive proof—Plaintiff injured jumping off platform after explosion—No evidence that defendant's explanation consistent with absence of negligence. **Colvilles Ltd v Devine** [1969] 2 53, HL.

Malicious act of third party—Identity of third party—Possibility that third party servant of defendants—Plaintiff injured through breaking of hoist rope—Proof that rope had been cut maliciously. **Birchall v J Bibby & Sons Ltd** [1953] 1 163, Assizes.

Evidence sufficient to raise presumption—

Dentist—Extraction of tooth—Fracture of jaw—Whether sufficient evidence to raise presumption of negligence. **Fish v Kapur** [1948] 2 176, KBD.

Surgical operation—Tube left in body—Surgeon not having direct control, charge or power over patient during relevant period—Action for negligence against surgeon—Whether finding of tube sufficient to raise presumption of negligence. **Morris v Winsbury-White** [1937] 4 494, KBD.

Latent defect—

Presumption of negligence not discharged by proof of latent defect—Defect not discoverable by exercise of reasonable care by defendant—Purchase of secondhand machine—Injury caused by broken bolt—Metal fatigue in bolt not discoverable by routine inspection—Onus on defendant to prove that they had exercised reasonable care when machine purchased. **Pearce v Round Oak Steel Works Ltd** [1969] 3 680, CA.

Nature of doctrine—

Onus on plaintiff—Plaintiff's evidence to explain cause of accident—Evidence giving rise to inference that cause of accident involved failure by defendant to take due care—Onus on plaintiff to adduce evidence—Rebuttal of inference. **Lloyde v West Midlands Gas Board** [1971] 2 1240, CA.

Pleading—

Adequacy—Particulars of negligence—Accident which prima facie could not have happened without defendants' negligence—Accident to plaintiff steel erector at site works—Electrical control panels stacked against wall—Removal to instal in prescribed places—Plaintiff supervising—Move to prevent pile toppling—Two panels falling and injuring plaintiff—No explanation of cause of fall—Terms of pleading—Workmen caused or permitted one or both panels to fall—Whether pleading adequately covered claim in negligence. **Bennett v Chemical Construction (GB) Ltd** [1971] 3 822, CA.

Road accident—

Collision between stationary and moving vehicle—Stationary vehicle on highway hit in daylight by agricultural tractor and baler—Narrow margin of space for passing—Onus on driver of moving vehicle to disprove negligence. **Randall v Tarrant** [1955] 1 600, CA.

Res judicata. See **Estoppel** (Res judicata—Negligence).

NEGLIGENCE (cont)

Rescue—

Contributory negligence—

Rescue of child—Emergency act. *See* **Negligence** (Contributory negligence—Emergency act—Rescue of child).

Duty to rescuer. *See* Duty to take care—Rescuer, *post*.

Risk—

Consent to risk of injury. *See* Volenti non fit injuria—Consent to risk of injury, *post*.

Knowledge of risk—

Duty to take care. *See* Duty take care—Knowledge of risk, *ante*.

Road accident—

Contributory negligence. *See* Contributory negligence—Road accident, *ante*.

Res ipsa loquitur. *See* Res ipsa loquitur—Road accident, *post*.

School—

Local education authority. *See* **Education** (Local education authority—Negligence).

Sea wall—

Duty of catchment board to repair. *See* **Land drainage** (Sea wall—Negligence).

Seaworthiness—

Bill of lading—

Due diligence to make ship seaworthy. *See* **Shipping** (Bill of lading—Implied undertaking to use due diligence to make ship seaworthy).

Charterparty—

Due diligence to make ship seaworthy. *See* **Shipping** (Charterparty—Seaworthiness of vessel—Due diligence).

Ship—

Invitee—

Injury to employee of independent contractor during ship's trial. *See* Invitee—Ship—Injury to employee of independent contractor during ship's trial, *ante*.

Shipowners—

Immunities of shipowners—

Bill of lading—Management of ship. *See* **Shipping** (Bill of lading—Immunities of shipowner—Neglect in management of ship).

Skill and care—

Professional person. *See* Professional person—Duty to exercise reasonable skill and care, *ante*.

Solicitor. *See* **Solicitor** (Negligence).

Specialist anaesthetist—

Liability of hospital. *See* **Hospital** (Liability for negligence of members of staff—Specialist anaesthetist).

Spectator—

Duty to spectator at game or competition. *See* Duty to take care—Spectator at game or competition, *ante*.

Voluntary assumption of risk. *See* Volenti non fit injuria—Spectator at game or competition, *post*.

Statement—

Careless statement causing damage to person or property. *See* Duty to take care—Statement—Careless statement causing damage to person or property, *ante*.

Information or advice. *See* Information or advice, *ante*.

Statutory powers—

Damage caused by exercise of powers—

Statutory remedy excluding liability in negligence—Catchment board—Power to deposit on banks of river matter removed by dredging—Diversion of flood water as result of dredging operations—Statutory liability for damage—Whether owner of bridge entitled to maintain action for negligence. **Marriage v East Norfolk Rivers Catchment Board** [1949] 2 1021, CA.

Subsidence in land. *See* **Land** (Support).

Surgeon. *See* Professional person—Surgeon, *ante*.

Theft—

Prevention—

Duty to take care. *See* **Negligence** (Duty to take care—Prevention of theft).

Third party's intervention. *See* Causation—Intervention of third party, *ante*.

Title to sue—

Damage to property of another. *See* Duty to take care—Damage to property of another—Title to sue, *ante*.

Traffic signal—

Duty to take care. *See* Duty to take care—Traffic signal, *ante*.

Tramcar—

Duty of conductor to take care. *See* Duty to take care—Conductor of tramcar, *ante*.

Trespasser—

Duty of occupier to. *See* **Occupier's liability** (Trespasser).

Vehicles—

Contributory negligence—

Collision. *See* Contributory negligence—Collision between vehicles on road, *ante*.

Duty of driver to take care. *See* Duty to take care—Driver of motor vehicle, *ante*.

Employer's liability—

Driver suffering from heart condition—Disease undiscoverable by prior medical examination—Accident due to death of driver while driving—Whether employer liable in negligence. **Ryan v Youngs** [1938] 1 522, CA.

NEGLIGENCE (cont)

Vehicles (cont)—

Failure to keep proper look-out—

Inability to pull up within limits of vision—*See* Volenti non fit injuria—Knowledge of risk—Passenger in car, *post*, person riding in dark negligent if unable to pull up within limits of vision—Cyclist colliding with air-raid shelter during black-out—Principle that person must be able to pull up within limits of vision not generally applicable—Special circumstances of each case proper test. **Morris v Luton Corpn** [1946] 1 1, CA.

Opening of vehicle door. *See* Highway—Opening of vehicle door, *ante*.

Parking on highway. *See* Highway—Parking on highway, *ante*.

Passenger—

Voluntary assumption of risk.

Passenger injured while alighting from omnibus—

Omnibus moving at time—Signal for omnibus to proceed already given by another passenger—Conductress not on platform. **Mottram v South Lancashire Transport Co** [1942] 2 452, CA.

Omnibus stopping short of request stop—No warning by conductor. **Prescott v Lancashire United Transport Co Ltd** [1953] 1 288, CA.

Public service vehicle—

Duty of conductor to passengers—Starting signal—Conductor absent from platform while vehicle stationary at request stop—Starting signal given by unauthorised person—Vehicle starting while plaintiff having one foot on step of car—Plaintiff injured—Whether conductor in breach of duty of care. **Davies v Liverpool Corpn** [1949] 2 175, CA.

Duty of driver to keep to time schedule—Conflict with duty of care—Injury to elderly pedestrian—Driver able to avoid accident—Plaintiff unable to tell whether pedestrian sufficiently young to avoid accident—Driver not blameworthy—Avoidance of accident conflicting with duty to observe time schedule—Whether driver liable in negligence. **Daly v Liverpool Corpn** [1939] 2 142, Assizes.

Reliance on defendant. *See* Duty to take care—Reliance on defendant—Motor vehicles, *ante*.

Skid—

Evidence of negligence—Unexplained and violent skid itself evidence of negligence. **Richley v Faulk (Richley, Third Party)** [1965] 3 109, QBD.

Vehicle mounting pavement—Skid not due to negligence on part of driver—Time and space available to remedy skid not sufficient. **Hunter v Wright** [1938] 2 621, CA.

Vehicle projecting over pavement—Presumption of negligence—Dangerous road covered with frozen snow—Heavy laden lorry driven at 10 to 12 mph. **Laurie v Raglan Building Co Ltd** [1941] 3 332, CA.

Speed—

Police vehicle—Relevance of speed limit to liability for negligence—Police motor cyclist travelling at 60 mph in pursuance of police duties—Speed limit 40 mph—Whether police motor cyclist exonerated from civil liability for negligence by statute—Road Traffic Act 1934, s 3. **Gaynor v Allen** [1959] 2 644, QBD.

Sudden and unexpected danger—Fall of tree—Motor vehicle passing two others on main country road at 70 mph—Sudden fall of tree across road ahead—Collision with motor vehicle on far side of fallen tree—Whether driver of motor vehicle negligent in overtaking at that speed on that road. **Quinn v Scott** [1965] 2 588, QBD.

Sudden stoppage of vehicle—

Failure of following vehicle to avoid collision—Liability of driver of following vehicle—Motor cyclists—String of motor cyclists engaged on treasure-hunt—Sudden braking by leading cyclist—Injury to pillion-rider on fourth motor cycle—Liability of first and fourth cyclists to pillion rider. **Smith v Harris** [1939] 3 960, CA.

Traffic lights—

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Voluntary consent—Notice by defendants excluding liability for injury—Plaintiff undergoing risk of injury in course of employment—Plaintiff a lighterman employed on barge—Train of barges being brought into dock by means of capstan rope provided and operated by defendants—Notice excluding liability of defendants to lightermen availing themselves of assistance provided by defendants—Plaintiff having no freedom to choose not to submit to terms of notice—Plaintiff injured by reason of defect in rope caused by defendants' negligence—Whether plaintiff having freely and voluntarily consented to risk of injury. **Burnett v British Waterways Board** [1972] 2 1353, QBD. [1973] 2 631, CA.

Voluntary consent—Workman injured on premises not owned by employer—Workman working in house damaged by blast—Voluntarily incurring risk of latent defect—House not owned by or in occupation of employer. **Taylor v Sims and Sims** [1942] 2 375, KBD.

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Risk of negligence—Licensee walking on defendants' railway track—Knowledge of danger from running of railway in usual way—No consent to risk of injury resulting from train driver's negligence. **Slater v Clay Cross Co Ltd** [1956] 2 625, CA.

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NEW SOUTH WALES (cont)**Compulsory resumption of land—****Assessment of compensation—**

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Resumption for settlement of ex-servicemen—Date for valuation of land—Closer Settlement (Amendment) Act 1907 (No 12 of 1907), s 4(4)(b), proviso (as amended) **Pye v Minister for Lands for New South Wales** [1954] 3 514, PC.

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Classes of property—Property disposed of by deceased by a settlement—Settlement containing trust to take effect after deceased's death—Property deemed to be included in estate being property subject to trust at time of death—Whether limited to actual property disposed of by deceased remaining subject to trust at time of death—Stamp Duties Act 1920—1964 (New South Wales), s 102(2)(a). **Comr of Stamp Duties v ATwill** [1973] 1 576, PC.

Classes of property—Property to which any person becomes entitled—Gift to trustees for charitable purposes—Trustees selecting university as beneficiary—Whether university 'any person...entitled' to property—Whether property exempt from duty—Stamp Duties Act 1920 (New South Wales), s 102(1)(a). **Perpetual Trustee Co Ltd v Comr of Stamp Duties** [1976] 2 792, PC.

Classes of property—Trust to take effect after death—Reservation of benefit—New South Wales Stamp Duties Act 1920—1949, s 102(2)(a)(c)(d). **Comr of Stamp Duties of New South Wales v Way** [1952] 1 198, PC.

Exemption—Gift of residuary estate to educational institution—Testator expressing wish in will that trustees should apply residuary estate towards building of arts centre—Direction to trustees to transfer residuary estate for that purpose to any one of several institutions—Executor selecting university—Whether gift for educational purposes or gift to educational institution—Whether residuary estate exempt from duty as gift to educational South institution—Educational Institutions (Stamp Duties Exemption) Act 1961 (New South Wales), s 2(1)(3)(a). **Perpetual Trustee Co Ltd v Comr of Stamp Duties** [1976] 2 792, PC.

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Interest in property within and outside New South Wales—Validity of relevant statutory provisions—New South Wales Stamp Duties Act 1920—1952, s 102(2)(g), (2A)—New South Wales Constitution Act 1902 (No 32), s 5. **Johnson v Comr of Stamp Duties, Comr of Stamp Duties v Johnson, Perpetual Trustee Co (Ltd) v Comr of Stamp Duties, Forster v Same** [1956] 1 502, PC.

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Negligence—Ingredients of cause of action occurring outside the jurisdiction—English company manufacturing drugs and supplying them to Australian company for sale in Australia—English company not resident within jurisdiction—Failure by English company to give warning or notice of danger of taking drug in early months of pregnancy—Plaintiff born malformed as result of mother taking drug—Action in negligence by plaintiff against English company—Whether cause of action arising within jurisdiction—Common Law Procedure Act (No 21 of 1899), s 18(4)(a). **Distillers Co (Bio-Chemicals) Ltd v Thompson** [1971] 1 694, PC.

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Land owned by public hospital—No physical use of land—'Used'—'Occupied'—New South Wales Local Government Act 1919 (No 41 of 1919), s 132(1)(d). **Newcastle City Council v Royal Newcastle Hospital** [1959] 1 734, PC.

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Consultation—Information as to proposed new town—New Towns Act 1946, s 1(1), Sch I, para 1. **Rollo v Minister of Town and Country Planning** [1948] 1 13, CA.

Draft order—Objections—Public inquiry—Scope of inquiry—Nature of Minister's duties—Need to support proposed order by public inquiry—Bias—New Towns Act 1946, s 1(1), Sch I, para 3. **Franklin v Minister of Town and Country Planning** [1947] 2 289, HL.

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Debentures issued in New Zealand by borough council and secured on a rate thereof—Whether interest thereon reduced by effect of Financial Emergency Act 1931 (No 3961 of Victoria), s 19(1)—Distinction between obligation and performance of the obligation. **Mount Albert Borough Council v Australasian Temperance and General Mutual Life Assurance Society Ltd** [1937] 4 206, PC.

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Transfer of property by deceased to his sons in 1932—Covenant by sons to pay deceased annuity for his life—Deceased dying in 1949—Whether property liable to duty—New Zealand Death Duties Act 1921 (1921, No 21), s 5(1)(j). **Ward v Comr of Inland Revenue** [1956] 1 571, PC.

NEW ZEALAND (cont)**Executor and administrator—****Notice to creditors and others to send in claims—**

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Arrangement having purpose or effect of altering incidence of tax—Purpose or effect—Meaning—No real distinction in meaning—Arrangement having particular effect treated as having that purpose—Motive irrelevant—Arrangement void if one of its effects is to alter incidence of tax—Purpose or effect of arrangement to be determined by reference to the arrangement only—Land and Income Tax Act 1954, s 108. **Ashton v Inland Revenue Comr** [1975] 3 225, PC.

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Profits or gains—Meaning—Conversion of sterling funds into New Zealand currency—Purchase of United Kingdom securities with sterling funds and simultaneous sale of securities for New Zealand currency—Transactions yielding premium over amount of New Zealand currency receivable by converting sterling at official rate of exchange—Transactions of that kind in common use for purpose of converting sterling into New Zealand currency—Whether premium a profit derived from sale of United Kingdom securities—Land and Income Tax Act 1954, s 88(1)(c). **Holden v Inland Revenue Comr** [1974] 2 812, PC.

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Refusal of permission to develop—Statutory exclusion of right to compensation—Evidence—Evidence of Ministry's view as to reasonableness of restrictive provisions in a planning scheme—Adequacy of oral evidence. **Belfast Corpn v O D Cars Ltd** [1960] 1 65, HL.

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Assignment—

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Breach of covenant in lease—

Forfeiture—

Failure to give notice of breach. *See* **Landlord and tenant** (Forfeiture of lease—Notice of breach—Failure to give notice).

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Breach of repairing covenant in lease—

Forfeiture. *See* **Landlord and tenant** (Forfeiture of lease—Breach of repairing covenant—Notice).Building society meeting. *See* **Building society** (Meeting—Notice concerning meeting).

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Notice by landlord to terminate tenancy. *See* **Landlord and tenant** (Business premises—Notice by landlord to terminate tenancy).

Commonwealth immigrant—

Notice of refusal of admission to United Kingdom. *See* **Commonwealth immigrant** (Admission—Refusal of admission—Notice of refusal).

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NOTICE (cont)

- Entry on premises—
 - Notice to occupier. *See* **Public health** (Entry on premises—Notice).
- Exclusion of liability—
 - Negligence. *See* **Negligence** (Defence—Exclusion of liability—Notice).
- Gaming licence application. *See* **Gaming** (Licensing of premises—Application for licence—Notice advertising making of application).
- Hearsay evidence—
 - Intention to adduce. *See* **Document** (Admissibility in evidence—Out-of-court statement—Notice of intention to give in evidence).
- Housing—
 - Notice from local authority. *See* **Housing** (Notice from local authority).
- Improvement. *See* **Housing** (Improvement notice).
- Industrial training levy—
 - Notice of assessment. *See* **Industrial training** (Levy—Assessment—Notice).
- Inspector of taxes—
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- Intended prosecutions—
 - Motoring offences. *See* **Road traffic** (Notice of intended prosecution).
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- Licence to occupy premises—
 - Termination. *See* **Licence** (Licence to occupy premises—Notice to terminate occupation).
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 - Building society. *See* **Building society** (Meeting—Notice convening meeting).
 - Company. *See* **Company** (Meeting—Notice of meeting).
- Notice to quit—
 - Administration proceedings—
 - Service of notice. *See* **Administration of estates** (Practice—Service—Notice to quit).
 - Agricultural holding. *See* **Agricultural holding** (Notice to quit).
 - Allotment. *See* **Allotment** (Allotment garden—Termination of tenancy).
 - Landlord and tenant. *See* **Landlord and tenant** (Notice to quit).
 - Local authority house. *See* **Housing** (Local authority houses—Notice to quit).
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 - Compulsory acquisition of land. *See* **Compulsory purchase** (Notice to treat).
- Opposition to grant of new tenancy. *See* **Landlord and tenant** (Opposition to grant of new tenancy of business premises—Notice of opposition).
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 - Land registration. *See* **Land registration** (Notice—Positive covenant noted on register).
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NOTICE (cont)

Termination of agency. *See* **Agent** (Termination of agency—Notice).

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Allotment. *See* **Allotment** (Allotment garden—Termination of tenancy).

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NOTICE TO TREAT

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NOXIOUS MATTER

Entry into river. *See* **Water and watercourses** (Pollution of river—Causing poisonous, noxious or polluting matter to enter river).

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NUISANCE

Byelaw—

Validity. *See* **Byelaw** (Validity—Repugnant to statute—Byelaw prohibiting nuisance by noisy animals).

Creation of nuisance—

Flooding—

Interference with course of stream—Culvert constructed in 1926 by highway authority to carry stream under highway—Entrance to culvert not protected by grid—Property on lower side of highway flooded owing to entrance to culvert being blocked by debris—Liability of highway authority—Liability of occupiers of fields—Apportionment of liability. **Pemberton v Bright** [1960] 1 792, CA.

Sewer—

Overflow—Flooding of neighbouring premises—Overloading of sewers—Sanitary authority under statutory duty to allow occupiers of houses to discharge sewage into sewers—Liability of sanitary authority—Whether authority having created or continued nuisance—Public Health Act 1936, ss 31, 34(1). **Smeaton v Ilford Corp'n** [1954] 1 923, ChD.

Damage—

Foreseeability—

Need to establish damage foreseeable—Necessary element in measure of damages for nuisance—Distinction between measure of damage in all actions in nuisance and special damage required to render public nuisance actionable at suit of member of public—On measure of damages the criterion of foreseeability arises as in negligence actions. **The Wagon Mound (No 2)** [1966] 2 709, PC.

Property held under grant from defendant—

Implied agreement—Lease by quarry owner of land next to quarry—Injury to land from working of quarry—Working not improper—Whether open to lessee to complain of injury to property land subject to grant. **Thomas v Lewis** [1937] 1 137, ChD.

Smuts emanating from defendant's land—

Acid smuts—Damage to clothes hung out to dry in plaintiff's garden—Smuts created by defendant's carrying on trade on neighbouring property—Oil depot—Whether defendant's liable for damage to clothes as resulting from private nuisance. **Halsey v Esso Petroleum Co Ltd** [1961] 2 145, QBD.

Wall on adjoining property—

Mound of earth piled against wall—Date when cause of action arose—Appropriate remedy—Damage to adjoining wall and land by percolation of injurious chemicals deposited on mound—No substantial damage sustained up to date of proceedings—Whether cause of action arose when undue burden placed on wall or when damage first occurred—Whether damages or injunction appropriate remedy. **Maberley v Peabody & Co of London Ltd, Rowland Smith Motors Ltd, and Rowland Smith** [1946] 2 192, KBD.

Damages—

Interference with trade—

Trade having increased during period of nuisance—Hoarding erected outside shop following fire—Hoarding interfering with access to shop—Trade in fact having increased while hoarding there—Whether owner of shop entitled to damages. **Collingwood v Home & Colonial Stores Ltd** [1936] 1 74, KBD.

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NUISANCE (cont)

Disturbance of easement—

Light. *See* **Easement** (Light—Interference with light—Test whether interference complained of amounting to nuisance).

Right of way. *See* **Easement** (Right of way—Disturbance—Remedy).

Escape in consequence of non-natural use of land—

Act of stranger—

Dangerous substance on land—Explosion—Motor vehicle in parking ground—Explosion caused by act of strangers—Whether occupiers of parking ground liable. **Perry v Kendricks Transport Ltd** [1956] 1 154, CA.

Consent by plaintiff to condition causing escape—

Implied consent—Knowledge of condition—Storage for benefit of plaintiff—Plaintiff taking tenancy of shop forming part of building belonging to defendant—Escape of water from choked gutter damaging plaintiff's stock—Not open to plaintiff to complain of structure of building—Arrangements for collection and carrying away of water for joint benefit of plaintiff and defendant. **Kiddle v City Business Premises Ltd** [1942] 2 216, KBD.

Consent of plaintiff to condition causing escape—

Knowledge and implied consent—Water—Flooding from sprinkler system—Damage to lower part of same building—Sprinkler system installed before possession taken. **Peters v Prince of Wales Theatre (Birmingham) Ltd** [1942] 2 533, CA.

Damage—

Personal injury—Fairground roundabout—Part of revolving apparatus becoming detached and causing injury—Accident caused by recklessness of third party—Liability of owner of fairground. **Hale v Jennings Bros** [1938] 1 579, CA.

Proximity of loss—Escape of virus—Cattle infected by disease—Plaintiffs cattle auctioneers—Cattle markets closed because of disease—Loss of business—Whether loss sufficiently proximate. **Weller & Co v Foot and Mouth Disease Research Institute** [1965] 3 560, QBD.

Escape from premises—

Need to establish—Shell burst in ordnance factory. **Read v J Lyons & Co Ltd** [1946] 2 471, HL.

Steam—Defective valve—Steamship—Plaintiff working on ship injured by escape of steam from defectively assembled valve—Steamship owners not liable—No escape of steam off the premises. **Howard v Furness Houlder Argentine Lines Ltd, and A & R Brown Ltd** [1936] 2 781, KBD.

Escape to premises of third party—

Damage to plaintiff—Escape of metal foil to premises of electricity board—Damage to plaintiff through loss of electric power—Whether actionable. **British Celanese Ltd v A H Hunt (Capacitors) Ltd** [1969] 2 1252, QBD.

Harmful substance—

Acid smuts—Smuts emanating from neighbouring land—Smuts damaging clothes in plaintiff's garden and plaintiff's car on highway—Smuts created by defendant's carrying on trade on neighbouring property—Oil depot—Whether defendants liable for damage caused to plaintiff's car and clothes. **Halsey v Esso Petroleum Co Ltd** [1961] 2 145, QBD.

Non-natural use—

Accumulation of waters for business purposes—Accumulation for defendant's benefit—User for extraordinary purpose—Escape of water on to adjoining premises—Liability without proof of specific acts of negligence. **Western Engraving Co v Film Laboratories Ltd** [1936] 1 106, CA.

Electrical wiring for domestic use—Fire caused by fault in electric lighting circuit—Damage to adjoining premises by water—No negligence whether use of electricity for domestic purposes non-natural use of land. **Collingwood v Home and Colonial Stores Ltd** [1936] 2 200, CA.

Metal foil—Foil stored on land in connection with manufacture of electrical and electronic components—Escape of metal foil causing damage—Whether special use of land. **British Celanese Ltd v A H Hunt (Capacitors) Ltd** [1969] 2 1252, QBD.

Statutory powers—

Mandatory power—Absence of negligence—Gas board—Obligation to supply gas—Escape of water from water main—Consequential breakage of, and escape of gas from, gas main—Explosion of gas—Whether gas board liable for resulting personal injuries—Gas Act 1948, s 1(1)(a), Sch 3, paras 33, 42—Waterworks Clauses Act 1847, s 27. **Dunne v North Western Gas Board** [1963] 3 916, CA.

Statutory power—

Permissive power—Absence of negligence—Statutory undertakers having done merely what statute authorised—Water undertakers—Escape of water from water main—Consequential breakage of and escape of gas from gas main—Explosion of gas—Whether water undertakers liable for resulting personal injuries—Gas Act 1948, s 1(1)(a), Sch 3, paras 33, 42—Waterworks Clauses Act 1847, s 27. **Dunne v North Western Gas Board** [1963] 3 916, CA.

Failure to remedy—

Creation of nuisance by lapse of time—

Pipe in river bed—Sewer—Obstruction to flow of river caused by pipe of sewer constructed by local authority beneath river bed not becoming exposed as river bed washed away—Damage to plaintiff's property from eddies caused—Sewer not out of repair—Whether any breach of duty to plaintiff's by statute or common law established—Covenant, in lease demising sewerage rights, that local authority would not interfere with flow of water in river—Benefit of covenant not assigned to plaintiff's subsequently becoming riparian owners—Statutory powers of sewage disposal overriding lease. **Radstock Co-operative & Industrial Society Ltd v Norton-Radstock Urban District Council** [1968] 2 59, CA.

NUISANCE (cont)

Failure to remedy (cont)—

Creation unknown to occupier—

Creation by trespasser—Adoption and continuation by occupier—Culvert or pipe laid on occupier's land by trespasser—Used by occupiers to drain field—Culvert liable to blockage thereby causing flooding—Whether occupier having adopted and continued nuisance—Whether occupier liable for failure to abate nuisance. *Sedleigh-Denfield v O'Callaghan (Trustees for St Joseph's Society for Foreign Missions)* [1940] 3 349, HL.

Knowledge of owner or occupier—

Awareness that situation constitutes a nuisance—Tree—Branch of tree intruding over trunk road at height of sixteen feet—Tree belonging to adjoining landowner but growing in verge forming part of highway—Intrusion of branch patent but no reasonable cause to realise branch constituted a nuisance—Nuisance not created by landowner—Whether landowner liable as having failed to remedy nuisance. *British Road Services Ltd v Slater* [1964] 1 816, Assizes.

Building in want of repair—Lack of knowledge—Owner liable to do repairs—House in disrepair—House collapsing on adjoining premises—Whether owner liable despite lack of knowledge of danger from want of repair. *Wringe v Cohen* [1939] 4 241, CA.

Creation of nuisance by stranger—Creation unknown to occupier—Not discoverable on reasonable examination—Tile on roof loosened in consequence of enemy action—Blown down by high wind—Whether occupier liable. *Cushing v Peter Walker & Son (Warrington & Burton) Ltd* [1941] 2 693, Assizes.

Natural conditions—Snow—Accumulation of snow on roof of defendant's house—Fall of snow from roof injuring person on highway—Whether accumulation of snow a nuisance of which defendant deemed to have knowledge. *Slater v Worthington's Cash Stores (1930) Ltd* [1941] 3 28, CA.

Presumed knowledge—Building unoccupied—Building damaged in air raid—Glass falling from premises five days later in consequence of damage—Owner having no actual knowledge of state of building—Whether knowledge to be presumed—Whether liable for continuing nuisance. *Lease v Egerton* [1943] 1 489, KBD.

Fire—

Escape to adjoining premises—

Negligence. *See Negligence* (Fire—Escape to adjoining premises).

Highway—

Danger arising from ordinary use—

Butcher's shop—Piece of fat escaping on to pavement. *Dollman v A & S Hillman Ltd* [1941] 1 355, CA.

Debris left by kerb—

No obstruction—Small heap of debris left by repairers of property for collection—Pedestrian tripping over pile—No negligence on part of pedestrian—Whether repairers liable in nuisance. *Almeroth v W E Chivers & Sons Ltd* [1948] 1 53, CA.

Highway authority's liability—

Flooding—Interference with course of stream. *See* Creation of nuisance—Flooding—Interference with course of stream—Culvert constructed in 1926 by highway authority to carry stream under highway, *ante*.

Warning of danger—Bridge over road—Headroom reduced below statutory limit by highway authority in repairing road—Negligent exercise of statutory powers—Head of passengers in lorry struck when passing under bridge—Warning signs indicating reduced height placed on bridge—Whether authority liable for creating and failing to abate nuisance. *Lewys v Burnett and Dunbar* [1945] 2 555, KBD.

Interference with business—

Queues—Access to shop—Formation of queues at adjacent shop—Defendant carrying on business as greengrocer—Queues forming outside shop when goods available—Queues interfering with access to neighbouring shops—Defendant doing nothing unnecessary or unreasonable—Whether defendant liable in nuisance. *Dwyer v Mansfield* [1946] 2 247, KBD.

Liability of owner or occupier of adjoining premises—

Grating in pavement—Want of repair—Grating admitting light to cellar of adjoining premises—Dedicated as part of highway—Liability of owner or occupier of adjoining premises for accident resulting from want of repair—Public Health Acts Amendment Act 1890, s 35(1). *Macfarlane v Gwalter* [1958] 1 181, CA.

Nuisance created by highway authority—Cover of cellar of adjoining premises not lying flush with pavement after reconstruction by highway authority—Whether owner of adjoining premises liable for resulting accident—Public Health Acts Amendment Act 1890, s 35(1). *Penney v Berry* [1955] 3 182, CA.

Negligence—

Statutory power to break up highway—Water board—Acts carried out under statutory power—Need to prove negligence—Leakage in water pipe—Paving stones on footpath affected—Water board not aware of danger—Pedestrian injured by movement of paving stone affected by leakage—Whether water board liable in absence of negligence. *Longhurst v Metropolitan Water Board* [1948] 2 834, HL.

Noise—

Lorries entering and leaving defendant's oil depot at night. *See Noise*—Emanation from defendant's land—Necessity for—Noise associated with defendant's land—Lorries on highway—Road tankers entering and leaving defendant's oil depot at night, *post*.

Nuisance adjoining highway—

Defective paving of forecourt adjoining highway—Need to cross forecourt to reach shop—Forecourt not fenced off from highway—Injury to customer leaving highway to visit shop—Act of customer in leaving highway deliberate—Whether occupier liable on ground defective pavement constituted a public nuisance adjoining highway. *Jacobs v London County Council* [1950] 1 737, HL.

NUISANCE (cont)**Highway (cont)—****Nuisance adjoining highway (cont)—**

Trailer left on land adjoining road—Child leaving road to play on trailer and injured—Whether contractors who left lorry by road liable in nuisance. **Creed v John McGeoch & Sons Ltd** [1955] 3 123, Assizes.

Obscuring visibility of users of highway—

Smoke and steam—Coke ovens—Smoke and steam escaping across highway—Collision on highway because view obscured—Liability in nuisance of factory owners for allowing smoke and steam to escape. **Holling v Yorkshire Traction Co Ltd** [1948] 2 662, Assizes.

Obstruction of highway—

Basis of liability—Causation—Negligence—Danger—Accident causing injury to plaintiff—Nuisance as cause of accident—Relevance of negligence in creating obstruction—Obstruction as a source of danger—Vehicle parked on highway—Vehicle constituting a public nuisance—Parking of vehicle not negligent—Collision of motor cycle with parked vehicle injuring pillion passenger—Accident wholly caused by negligence of driver of motor cycle—Nuisance not a cause of accident—Nuisance not a source of danger. **Dymond v Pearce** [1972] 1 1142, CA.

Unlighted vehicle left on highway—Need to prove vehicle a dangerous obstruction—Unlighted motor vehicle on road in darkness—Vehicle being towed by lorry—Lorry and vehicle stopped at place where vehicle within light of street lamp—Vehicle not a nuisance because not a dangerous obstruction. **Parish v Judd** [1960] 3 33, QBD.

Reasonableness of user—

Hosepipe laid across highway—House adjoining highway—Hosepipe laid across highway to supply water in time of drought—Plaintiff tripping over hosepipe—Whether defendant absolved from liability on ground user reasonable. **Trevett v Lee** [1955] 1 406, CA.

Obstruction of highway—Demonstration—Lawful user—Test whether user reasonable or not—Demonstration in public street. **R v Clark** [1963] 3 884, CCA.

Tree on land adjoining highway—

Dangerous condition—Knowledge of occupier of land—Reasonable care taken in management of land—No sign of danger in tree—Tree falling on passing car—Fall due to disease—Liability of occupier of land. **Caminer v Northern and London Investment Trust Ltd** [1950] 2 486, HL.

Unlighted vehicle on highway—

Negligence—Absence of negligence—Whether unlighted vehicle left on highway ipso facto a nuisance. **Maitland v Raisbeck** [1944] 2 272, CA.

Negligence—Liability for negligence. *See* **Negligence** (Highway—Unlighted vehicle).

Negligence—Need to prove—Motor lorry broken down on highway—Rear lamp of trailer left alight but subsequently going out—Plaintiff on motor cycle colliding with lorry—Whether lorry a nuisance despite absence of negligence on part of those who left it there. **Ware v Garston Haulage Co Ltd** [1943] 2 558, CA.

Obstruction of highway. *See* **Highway**—Obstruction of highway—Unlighted vehicle left on highway, *ante*.

Unreasonable use. *See* **Highway (Public nuisance—Unreasonable use of highway).****Vehicle subject to defect—**

Driver suffering from heart condition—Disease undiscoverable by prior medical examination—Driver employed by defendant to drive lorry—Accident due to sudden death of driver while driving—Whether employer liable in nuisance. **Ryan v Youngs** [1938] 1 522, CA.

Watching and besetting premises. *See* **Watching and besetting premises, post**.

Injunction. *See* **Injunction (Nuisance).****Isolated occurrence—****Escape of substance causing power failure—**

Damage caused to other electricity users—Metal foil blown onto electricity board's equipment so as to cause power failure—Whether isolated occurrence actionable. **British Celanese Ltd v A H Hunt (Capacitors) Ltd** [1969] 2 1252, QBD.

Single negligent act causing damage—

Defendant's act causing physical damage to electric cable supplying plaintiffs' factory—Whether actionable nuisance. **SCM (United Kingdom) Ltd v W J Whittall & Son Ltd** [1970] 2 417, QBD.

Land—

Natural right to support. *See* **Land** (Support—Natural right to support).

Subsidence in land. *See* **Land** (Support).

Landlord's liability—**Defective electric wiring—**

House let with defect—Landlord liable for repairs—Fire caused by defect—Live wire inadequately protected owing to negligence of contractor—Adjoining premises destroyed—Whether defective wiring a nuisance—Whether landlord liable for damage caused by fire—Fires Prevention (Metropolis) Act 1774, s 86. **Spicer v Smea** [1946] 1 489, KBD.

Nuisance created by tenants—

Nuisance impliedly authorised by landlords—Landlord's knowledge when tenants let into possession that likely to create nuisance—Conditions of tenancy expressly prohibiting tenants from creating nuisance—Whether landlord's knowledge that tenants likely to create nuisance sufficient to render him liable therefor. **Smith v Scott** [1972] 3 645, ChD.

Right to enter and repair—

Defective paving—Shop—Defective paving of forecourt—Injury to customer—No covenant by landlord to repair—Right of entry to inspect and repair—Repairs previously carried out by landlord—Whether landlord liable for want of repair. **Howard v Walker** [1947] 2 197, KBD.

NUISANCE (cont)

Landlord's liability (cont)—

Right to enter and repair (cont)—

Periodic tenancy of small dwelling-house—Implied right to enter and repair—No right of entry reserved to landlord—Liability of landlord in nuisance for want of repair—Collapse of wall—Increase of Rent and Mortgage Interest (Restrictions) Act 1920, s 16(2). **Mint v Good** [1950] 2 1159, CA.

Tenant's covenant to repair—

Danger of collapse of wall of building into adjoining premises—Danger known to landlords of building when building let to tenants—Full repairing covenant taken from tenants—Whether taking of covenant sufficient to exculpate landlords from liability to lessees of adjoining premises—Landlords and tenants jointly liable. **Brew Brothers Ltd v Snax (Ross) Ltd** [1970] 1 587, CA.

Local authority—

Exercise of statutory powers—

Remedy—Injunction against authority—Pollution of river—Sewage works—Sewage entering river in condition and quantity to cause nuisance—Injunction granted—Suspension of injunction. **Pride of Derby and Derbyshire Angling Assn Ltd v British Celanese Ltd** [1953] 1 179, CA.

Motive—

Acts done on own land—

Acts done maliciously to injure neighbour's business—Plaintiffs breeding silver foxes on their land—Defendant maliciously causing son to fire gun on edge of his land with intention of disturbing breeding of foxes. **Hollywood Silver Fox Farm Ltd v Emmett** [1936] 1 825, KBD.

Natural processes—

Things naturally on defendant's land—

Thistles—Thistledown blown on to neighbouring land—Whether action will lie for damage from thistledown. **Davey v Harrow Corp** [1957] 2 305, CA.

Neglect—

Need to prove—

State of defendant's property—Tree—Diseased tree falling on to highway—Defendant having taken all reasonable steps to ascertain condition of tree—Could not have realised tree likely to fall—Whether liable in nuisance. **Cunliffe v Bankes** [1945] 1 459, Assizes.

Negligence—

Need to prove—

Pollution of shore—Ship—Discharge of oil to lighten vessel stranded in estuary—Damage to adjoining foreshore—Whether necessary to prove negligence. **Esso Petroleum Co Ltd v Southport Corp** [1955] 3 864, HL.

Noise—

Building operations—

Reasonable steps to ensure no undue inconvenience to neighbours—Demolition and rebuilding operations—Damage limited to matters going over permissible line. **Andreae v Selfridge & Co Ltd** [1937] 3 255, CA.

Emanation from defendant's land—

Necessity for—Noise associated with operations on defendant's land—Lorries on highway—Road tankers entering and leaving defendant's oil depot at night—Noise partly from tankers partly from highways outside depot and partly from depot itself—Liability in nuisance for noise of tankers on highway—Whether private nuisance. **Halsey v Esso Petroleum Co Ltd** [1961] 2 145, QBD.

Inconvenience materially affecting ordinary physical comfort—

Night time operations—Boilers on neighbouring oil depot operating at night—At peak noise making doors and windows and doors in plaintiff's house to vibrate and preventing plaintiff sleeping—Whether sufficient noise to constitute nuisance. **Halsey v Esso Petroleum Co Ltd** [1961] 2 145, QBD.

Poultry farm—

Crowing of cocks—Defendant making no effort to move cockerels further from plaintiff's property after complaints—Injunction granted. **Leeman v Montagu** [1936] 2 1677, KBD.

Occupier—

Nuisance on land of which plaintiff in occupation—

Plaintiff and defendant in joint occupation—Plaintiff in sole occupation of land affected by nuisance—Whether action will lie at suit of plaintiff. **Hooper v Rogers** [1974] 3 417, CA.

Occupation—

Statutory power—Recreation ground dedicated to public—Local authority having statutory powers of management and control of recreation ground—Noise from model aircraft flown in recreation ground—No contravention of bye-laws—Whether local authority liable as occupier—Public Health Act 1875, s 164. **Hall v Beckenham Corp** [1949] 1 423, KBD.

Statutory power—Stream—Power of local authority to remove obstructions—Authority exercising statutory power to place sewer in stream—Flooding due to weir erected and maintained by riparian owner—Whether exercise of statutory powers constituting local authority occupier of stream—Nelson Local Board Act 1879, ss 20, 21, 22. **Bank View Mill Ltd v Nelson Corp and Fryer & Co (Nelson) Ltd** [1943] 1 299, CA.

Picketing. *See Trade Dispute (Picketing—Nuisance).*

Principle of *Rylands v Fletcher*. *See* Escape in consequence of non-natural use of land, *ante*.

Prostitution—

Use of premises for prostitution—

Interference with comfortable and convenient enjoyment of neighbouring properties—Good class residential street—Defendants soliciting men in nearby streets and bringing them to house in street for purposes of prostitution—Whether *prima facie* case of nuisance. **Thompson-Schwab v Costaki** [1956] 1 652, CA.

NUISANCE (cont)

Public nuisance—

Action by local authority—

Institution of proceedings. *See Practice* (Parties—Local authority).

Criminal proceedings. *See Criminal law* (Public nuisance).

Injunction. *See Injunction* (Nuisance—Public nuisance).

Pollution of shore—

Discharge of oil to lighten vessel stranded in estuary—Damage to adjoining foreshore—Failure by defendants to prove inevitable accident. *Esso Petroleum Co Ltd v Southport Corp* [1955] 3 864, HL.

Private nuisance distinguished—

Who must be affected to constitute public nuisance—Isolated act capable of constituting public nuisance—Dust and vibration from quarry affecting adjoining householders—Evidence—Injunction—Remedial measures taken since action begun—Whether injunction should be granted. *Attorney-General (on the relation of Glamorgan County Council and Pontardawe Rural District Council) v PYA Quarries Ltd* [1957] 1 894, CA.

Special damage—

Damage to unadopted road—Frontagers. *Medcalf v R Strawbridge Ltd* [1937] 2 393, KBD.

Right to sue—

Tenant—

Original tenant who has assigned lease—Nuisance by noise created by landlords after assignment—Assignee tenant having absconded—Whether original tenant having right to sue. *Metropolitan Properties Ltd v Jones* [1939] 2 202, KBD.

Sewage—

Local authority's liability—

Pollution of river by sewage—Local authority in control of sewer—Sewer originally constructed by rural sanitary authority—Subsequent legislation vesting rights and duties of sanitary authority in local authority—Injunction against local authority at suit of private individual. *Haigh v Deudraeth Rural District Council* [1945] 2 661, ChD.

Smell—

Damages—

Loss of amenity—Non-pecuniary damage—Smell from neighbouring pig farm interfering with plaintiff's enjoyment of property—Nuisance continuing intermittently for period of over 12 years—Analogy with damages for loss of amenity in personal injury cases—Award of damages at £500 a year—Whether award excessive. *Bone v Seale* [1975] 1 787, CA.

Injury to health—

Need to prove—Smell emanating from defendant's oil depot—No injury to plaintiff's health—Whether injury to health a necessary ingredient in cause of action for nuisance by smell. *Halsey v Esso Petroleum Co Ltd* [1961] 2 145, QBD.

Statutory nuisance—

Abatement notice—

Failure to comply—Complaint to justices—Procedure—Initiation of proceedings—Complaint by individual—Information laid by person aggrieved by nuisance—Jurisdiction of justices—Whether person entitled to lay information against local authority—Public Health Act 1936, ss 94, 99. *R v Newham Justices, ex parte Hunt* [1976] 1 839, QBD.

Failure to comply—Complaint to justices—Procedure—Initiation of proceedings—Information laid by local authority—Jurisdiction of justices—Whether failure to comply with abatement notice an 'offence'—Whether laying of information proper method of initiating proceedings—Public Health Act 1936, s 94(1) (2)—Magistrates' Courts Act 1952, s 42. *Northern Ireland Trailers Ltd v County Borough of Preston* [1972] 1 260, QBD.

Form—Method of abating nuisance specified—Abatement notice specifying manner in which nuisance to be abated—Validity—Words specifying method of abating nuisance mere surplage—Power of justices to make nuisance order in terms other than those of abatement notice—Public Health Act 1936, ss 93, 94(1) (2), 95(1). *McGillivray v Stephenson* [1950] 1 942, KBD.

Owner of premises—Person receiving the rackrent as agent—Bank—Rackrent paid into owner's account at bank—Bank paying rates on behalf of owner to local authority—Whether special circumstances constituting bank agent for owner—Whether local authority entitled to serve notice on bank as 'owner'—Public Health Act 1936, s 343(1). *Midland Bank Ltd v Conway Borough Council* [1965] 2 972, QBD.

Owner of premises—Person receiving the rackrent as agent—Secretary of owner receiving cheques for rent and paying them into owner's account—Whether secretary receiving the rent as 'as agent or trustee' for owner—Public Health Act 1936, ss 93, 343(1). *Bottomley v Harrison* [1952] 1 368, KBD.

Accumulation or deposit prejudicial to health or a nuisance—

Nuisance—Visual impact—Accumulation of rubbish visible to neighbouring houses—Whether accumulation capable of being a statutory nuisance by reason of its visual impact—Public Health Act 1936, s 92(1)(c). *Coventry City Council v Cartwright* [1975] 2 99, QBD.

Prejudicial to health—Likelihood of physical injury—Injury to persons coming on to site—Local authority allowing accumulation on site of inert material including tins and broken glass—Public permitted to come on to land—Likelihood of injury to persons coming on to land—Whether accumulation prejudicial to health—Public Health Act 1936, s 92(1)(c). *Coventry City Council v Cartwright* [1975] 2 99, QBD.

Appeal against justices' order—

Nuisance order made by justices on failure to comply with abatement notice—Appeal a rehearing—Circumstances relating to the offence at date of 'hearing of the complaint'—Whether circumstances at date of hearing before justices or at date of appeal to be considered—Public Health Act 1936, s 94(2). *Northern Ireland Trailers Ltd v County Borough of Preston* [1972] 1 260, QBD.

NUISANCE (cont)

Statutory nuisance (cont)—

Complaint to justices—

Proceedings against local authority—Competence—Public Health Act 1936, ss 92(1)(c), 99.
R v Epping (Waltham Abbey) Justices, ex parte Burlinson [1947] 2 537, KBD.

Defence—

War damage—Liability of landlord for want of repair—Roofs of houses in state of disrepair—
 Damage to roofs caused by enemy action—Statutory nuisance—Abatement notice served
 on landlord—Failure to carry out repairs—Whether landlord entitled to relief from obligation
 in case of war damage—Public Health Act 1936, ss 91—94—Landlord and Tenant (War
 Damage) Act 1939, s 1. **Turley v King** [1944] 2 489, KBD.

Jurisdiction of justices—

Premises occupied for the public service of the Crown—Hospital transferred to minister under
 National Health Service Act 1946—Whether justices had jurisdiction to hear complaint—
 Public Health Act 1936, s 106. **Nottingham Area No 1 Hospital Management Committee
 v Owen** [1957] 3 358, QBD.

Metropolis—

Summons—Service—Summons on complaint of local authority—Public Health (London) Act
 1936, s 301(1)(a)(i)—London Government Act 1939, s 183(1). **R v Wilson, ex parte
 Battersea Borough Council** [1947] 2 569, KBD.

Nuisance order—

Defence—House subject to clearance order—House acquired by local authority for purpose
 of demolition—Demolition postponed on ground house could be rendered capable of
 providing accommodation adequate for time being—Finding by justices that house in such
 a state as to be prejudicial to health—Whether justices bound to make nuisance order—
 Whether a defence that house occupied as one capable of providing adequate
 accommodation pending demolition—Public Health Act 1936, ss 92(1)(a), 94(2), 99—
 Housing Act 1957, s 48(1). **Salford City Council v McNally** [1975] 2 860, HL.

Duty of justices to make order on finding that nuisance exists—Discretion as to
 implementation of order—Power to delay operation of order—Duty of justices to take into
 account surrounding circumstances—House constituting nuisance subject to unconfirmed
 compulsory purchase order under slum clearance programme—Power of justices to delay
 operation of order in view of prospective demolition of house—Public Health Act 1936, s
 94(2). **Nottingham Corp v Newton** [1974] 2 760, QBD.

House subject to clearance order—Defence. *See* Statutory nuisance—Nuisance order—
 Defence—House subject to clearance order, *ante*.

House subject to clearance order—House acquired by local authority for purpose of
 demolition—Demolition postponed on ground house could be rendered capable of
 providing accommodation adequate for time being—Tenant of house preferring complaint
 against authority alleging statutory nuisance—Complaint proved—Whether justices bound
 to make nuisance order—Whether authority can be compelled to carry out repairs rendering
 house of more than adequate standard for time being—Public Health Act 1936, s 99—
 Housing Act 1957, s 48. **Salford City Council v McNally** [1975] 1 597, QBD.

Terms of order—Jurisdiction of justices to add terms to order—Form of additional terms—
 Complaint of noise emanating from public house—Justices making nuisance order and
 requiring that noise level should not exceed 70 decibels—Whether justices having
 jurisdiction to make requirement—Whether requirement void for uncertainty—Public
 Health Act 1936, ss 94(2)(a), 99 (as amended by the Noise Abatement Act 1960, s 1(2)(a)).
R v Fenny Stratford Justices, ex parte Watney Mann (Midlands) Ltd [1976] 2 888,
 QBD.

Premises in such a state as to be prejudicial to health or a nuisance—

Or a nuisance—Discomfort to tenant—Walls and ceilings of rooms and landing stained, dirty,
 and flaking, and in need of decorative repair—Whether a 'nuisance'—Public Health (London)
 Act 1936, s 82(1)(a)—Public Health Act 1936, s 92(1)(a). **Springett v Harold** [1954] 1 568,
 QBD.

Or a nuisance—Injury or danger of injury to health—Interference with personal comfort of
 occupier—Landlord removing doors and windows of dwelling-house—Whether necessary
 to establish injury or danger of injury to health—Whether sufficient if occupier only
 affected—Public Health Act 1936, s 92(1)(a). **Betts v Penge Urban District Council** [1942]
 2 61, KBD.

Premises in such a state as to be a nuisance—

Or a nuisance—Need to prove existence of common law public or private nuisance—Premises
 in disrepair—State of premises such as to interfere with comfort of occupiers—No evidence
 of interference with comfort of public or with use and enjoyment of neighbouring property—
 Whether a 'nuisance'—Public Health Act 1936, s 92(1)(a). **National Coal Board v Neath
 Borough Council** [1976] 2 478, QBD.

Prohibition notice—

Local authority resolution to issue complaint passed before service of prohibition notice and
 recurrence of nuisance—Propriety—Public Health (Recurring Nuisances) Act 1969, s 2.
Peaty v Field [1971] 2 895, QBD.

Requirements to be fulfilled before service—Local authority to be satisfied statutory nuisance
 has 'occurred'—Public Health (Recurring Nuisances) Act 1969, 2 1(1). **Peaty v Field** [1971]
 2 895, QBD.

Watercourse—

Natural watercourse—Obstruction impeding flow of water and causing flooding—Liability of
 owner for failing to abate—Nuisance not due to owner's act or default—Land Drainage Act
 1930, ss 35(1), 57(1)(2)—Public Health Act 1936, ss 93, 259(1)(b), proviso. **Neath Rural
 District Council v Williams** [1950] 2 625, KBD.

NUISANCE (cont)

Television—

Interference with reception—

Recreational facility—Plaintiffs relayed television broadcasts—Defendant electricity board erected 66 kv overhead power line that might cause interference with television reception—Quia timet action—Injunction refused because evidence showed interference due to remediable defects in line—Exceptional sensitivity of plaintiffs' business to electrical interference did not entitle them under law of nuisance to greater protection than ordinary householder—Whether actionable nuisance. **Bridlington Relay Ltd v Yorkshire Electricity Board** [1965] 1 264, ChD.

Tree—

Diseased tree falling on to highway—

Neglect. *See* Neglect—Need to prove—State of defendant's property—Tree—Diseased tree falling on to highway, *ante*.

Roots causing damage—

Creation of nuisance—Liability of person who planted trees—Roots of trees causing damage to adjoining owners' houses. **Butler v Standard Telephones and Cables Ltd** [1940] 1 121, KBD.

Owner's liability—Roots of trees causing damage to adjoining property. **Davey v Harrow Corp** [1957] 2 305, CA.

Remedy—Injunction—Encroachment of roots—Roots causing damage to neighbour's house—Continuing damage—Injunction granted—Form of injunction. **McCombe v Read** [1955] 2 458, QBD.

Tree on land adjoining highway—

Dangerous condition—Knowledge of occupier of land. *See* Highway—Tree on land adjoining highway—Dangerous condition—Knowledge of occupier of land, *ante*.

Watching and besetting premises—

Watching or besetting plaintiff's premises with a view to compelling him to do or not do something—

Existence of tort—Picketing on highway—Plaintiffs' offices picketed by defendants—Picketing not for purpose of trade dispute—Evidence that picketing interfering with conduct of plaintiffs' business—Purpose of picketing to compel plaintiffs to comply with demands made by defendants—No evidence of unlawful acts—Whether defendants' acts capable of constituting an actionable nuisance. **Hubbard v Pitt** [1975] 3 1, CA.

NULLITY

Alimony pendente lite—

Application to discharge order—

Order remaining effective after decree pending appeal—Discretion—Fair and reasonable. **Corbett v Corbett (otherwise Ashley) (No 2)** [1970] 2 654, Div.

Retrospective operation—Ground of nullity not a reason for discharging order ab initio. **Corbett v Corbett (otherwise Ashley) (No 2)** [1970] 2 654, Div.

Duration of order—

Wilful refusal by wife—Whether alimony pendente lite continues until decree absolute. *See* Divorce (Alimony—Pendente lite—Nullity—Wilful refusal by wife).

Appeal—

Time limit—

Appeal against decree absolute—No time and opportunity to appeal against decree nisi—Appeal subject to normal time limit—Supreme Court of Judicature (Consolidation) Act 1925, ss 27(1)(2), 31(1)(e). **Whitehead v Whitehead (otherwise Vasbor)** [1962] 3 800, CA.

Bar to relief—

Approbation of unconsummated marriage—

Adoption of child by spouses—Recognition of existence of marriage by petitioner. **W v W** [1952] 1 858, CA.

Artificial insemination of wife with husband's seed—Birth of child—Estoppel—Public policy—Bastardisation of child by nullity decree. **L v L** [1949] 1 141, Div.

Birth of child—Fecundation ab extra—Approbation—Sincerity. **Clarke (otherwise Talbott) v Clarke** [1943] 2 540, Div.

Knowledge of facts and law—Husband permanently sterilised before marriage by medical operation—Avoidance of procreation of children—Wife's knowledge of operation at time of marriage—Whether bar to decree—Lack of sincerity—Matrimonial Causes Act 1937, s 7(1)(a). **J (otherwise S) v J** [1947] 2 43, CA.

Knowledge of facts and law—Reliance on validity of marriage for purpose of other proceedings—Decree inequitable and against public policy. **Tindall v Tindall** [1953] 1 139, CA.

Knowledge of facts and law—Treatment by way of artificial insemination—Adoption of child by spouses. **Slater v Slater** [1953] 1 246, CA.

Nature of bar—Whether or not a discretionary bar. **G v G (otherwise H)** [1960] 3 56, Div.

Pre-marital understanding between spouses regarding sexual intercourse—Acquiescence by petitioner for over four years—Wilful refusal to consummate marriage—Matrimonial Causes Act 1950, s 8(1)(a). **Scott v Scott (otherwise Fone)** [1959] 1 531, Div.

Insincerity—

Approbation of marriage—Desire of petitioner husband to be relieved from financial liability to wife. **Clifford v Clifford** [1948] 1 394, CA.

Factors to be considered—Time of knowledge of husband's impotence—Motives inducing marriage—Relevance. **Nash (otherwise Lister) v Nash** [1940] 1 206, Div.

Bigamous marriage—

Children of marriage—

Custody—Power of court to make order—Matrimonial Causes Act 1950, s 26(1). **Bryant v Bryant** [1955] 2 116, CA.

NULLITY (cont)

Bigamous marriage (cont)—

Estoppel—

Parties to bigamous marriage aware that earlier marriage still in existence—Duty of court to inquire into facts alleged—Matrimonial Causes Act 1950, s 4(1). **Hayward v Hayward** [1961] 1 236, Div.

Wife deserted by first husband in 1926—First husband last heard of in 1930—Wife married second husband in 1944—Second husband had then full knowledge of facts—Allegation by second husband in 1959 that 1944 marriage bigamous—Whether second husband estopped from disputing validity of 1944 marriage. **Bullock v Bullock** [1960] 2 307, Div.

Onus of proof as to death—

Husband going through second ceremony of marriage 16 years after wife last known to be alive—Presumption of continuance of life. **Chard v Chard (otherwise Northcott)** [1955] 3 721, Div.

Birth of child—

Evidence. *See* Pregnancy at date of marriage by person other than petitioner—Evidence—Birth of child, *post*.

Blood test—

Power of court to order blood tests. *See* Pregnancy at date of marriage by person other than petitioner—Application for order for blood tests, *post*.

Child of void marriage—

Legitimacy and legitimation. *See* Legitimacy (Child of void marriage).

Children—

Arrangements for care and upbringing—

Generally. *See* Divorce (Infant—Child of family—Arrangements for care and upbringing).

Petition—Petition filed before 1st January 1971. *See* Divorce (Infant—Child of the family—Arrangements for care and upbringing—Practice—Petitions filed before 1st January 1971—Divorce or nullity proceedings or proceedings for judicial separation).

Confidential information—

Venereal disease. *See* Venereal disease, *post*.

Consent to marriage—

Duress—

Absence of duress—Purpose of marriage to enable wife, a German, to live in England with another man with whom she had been living as his wife—No cohabitation between the parties to the marriage. **Silver (or^{se} Kraft) v Silver** [1955] 2 614, Div.

Capacity of petitioner to resist—Respondent threatening to kill petitioner if she refused to marry him—Respondent Egyptian subject—Ceremony performed in England—Jurisdiction. **Hussein (otherwise Blitz) v Hussein** [1938] 2 344, Div.

Degree of fear necessary to vitiate consent—Fear must be of sufficient degree to vitiate consent, reasonably entertained and arise from some external circumstance for which petitioner not responsible. **Buckland v Buckland** [1967] 2 300, Div.

Degree of fear necessary to vitiate consent—Obedience to parents' wishes and religious customs—Arranged marriage—Sikh marriage—Marriage arranged by parents—Wife never having seen husband prior to marriage ceremony—Wife taking dislike to husband at first meeting on occasion of marriage ceremony—Wife proceeding with ceremony in obedience to parents' wishes and out of respect for Sikh customs. **Singh v Singh** [1971] 2 828, CA.

Father of petitioner inducing her by fear to go through marriage ceremony with respondent. **Parojic (otherwise Ivetic) v Parojic** [1959] 1 1, Div.

Marriage in country under communist government—Marriage to foreigner to obtain passport—No consummation of marriage. **H (or^{se} D) v H** [1953] 2 1229, Div.

Will of one party overborne by fear—Fear genuine and reasonably held relating to danger to life, limb or liberty—Ceremony of marriage in Polish prison—Attempt to save detainee from ill-effects of long prison term. **Szechter (otherwise Karsov) v Szechter** [1970] 3 905, Div.

Consummation of marriage—

Incapacity. *See* Incapacity to consummate marriage, *post*.

Costs—

Security for costs—

Order—Form—Petitioner resident out of jurisdiction—Uncertainty whether order made under Matrimonial Causes Rules 1968 (S.I. 1968 No 219) r 37, or RSC Ord 23—Order to state rules under which made. **Corbett v Corbett (otherwise Ashley)** [1970] 2 33, Div.

Death of spouse—

Bigamous marriage. *See* Bigamous marriage—Onus of proof as to death, *ante*.

Declaration—

Jurisdiction—

Jewish bill of divorcement—Declaratory judgment sought that marriage be dissolved—Jurisdiction of court to make declaratory order—Husband domiciled in Israel—Wife resident in England—RSC Ord 25, r 5. **Har-Shefi v Har-Shefi** [1953] 1 783, CA.

Marriage void—

Banns not published—Marriage abroad between two British subjects according to rites of Church of England—Marriage Act 1949, s 25. **Hooper (or^{se} Harrison) v Hooper** [1959] 2 575, Div.

Discretion as to declaration—Discretionary jurisdiction under RSC Ord 25, r 5, to make declaration not applicable—Decree of nullity in fact a declaration and not discretionary. **Kassim (otherwise Widmann) v Kassim (otherwise Hassim)** (Carl and Dickson cited) [1962] 3 426, Div.

Wife a man—Power of court to make bare declaratory order—RSC Ord 15. **Corbett v Corbett (otherwise Ashley)** [1970] 2 33, Div.

Declaration as to marital status. *See* Declaration (Jurisdiction—Declaration as to marital status).

NULLITY (cont)

Decree—

Effect—

Application under Inheritance (Family Provision) Act 1938—Locus standi of daughter whose marriage had been annulled before will made. *See Family Provision* (Daughter—Daughter who has not been married—Application for reasonable provision to be made for her maintenance—Locus standi of daughter whose marriage annulled before will made).

Separation agreement entered into between the parties prior to the decree of annulment—Whether provision made for the wife under the agreement enforceable. *Fowke v Fowke* [1938] 2 638, ChD *Adams v Adams* [1941] 1 334, CA.

Order for transfer of property on grant of decree. *See Husband and wife* (Matrimonial home—Transfer—Order of court—Application for order on decree of divorce, nullity or judicial separation).

Status—

Decree operates on status of parties to the marriage. *Merker v Merker* [1962] 3 928, Div.

Decree nisi—

Effect—

Remarriage—Wife granted decree nisi of nullity, on the ground of husband's incapacity—Remarriage of wife before decree made absolute—Whether second marriage bigamous. *Wiggins v Wiggins* (otherwise *Brooks*) and *Ingram* [1958] 2 555, District Registry.

Domicile—

Marriage by proxy of Italians in Italy—

Wilful refusal by wife to consummate marriage—Husband domiciled in England at time of marriage and at time of suit—Law applicable for determining issue of nullity. *Ponticelli v Ponticelli* (otherwise *Giglio*) (by her Guardian) [1958] 1 357, Div.

Duress vitiating consent to marriage. *See* Consent to marriage—Duress, *ante*.

Estoppel—

Bigamous marriage. *See* Bigamous marriage—Estoppel, *ante*.

Evidence—

Incapacity to consummate marriage. *See* Incapacity to consummate marriage, *post*.

Medical inspector's evidence—

Written statement—Affidavit—Evidence Act 1938, s 1(2)—Matrimonial Causes Rules 1957 (S I 1957 No 619), r 25(1). *Practice Direction* [1967] 3 828, Div.

Financial provision and property adjustment—

Decree against male respondent—

Maintenance and variation of settlements—Short cohabitation—Petitioner having means. *Clifton* (otherwise *Packe*) v *Clifton* [1936] 2 886, Div.

Maintenance—

Conduct of parties—Matters to be taken into consideration—Refusal of intercourse by wife without contraceptives—Assent of husband—Ignorance of parties of legal position—Age of wife at time of decree—Supreme Court of Judicature (Consolidation) Act 1925, s 190(1). *Dailey v Dailey* (otherwise *Smith*) [1947] 2 269, CA.

Foreign decree—

Recognition. *See* Recognition of foreign decree, *post*.

Foreign marriage—

Second marriage—

Lex loci celebrationis not providing for divorce—Husband's first marriage in Eire dissolved by English court, parties being then domiciled in England—Second marriage of husband in Republic of Ireland—Whether second marriage void—Constitution of Ireland, art 41, s 3(3). *Breen* (otherwise *Smith*) v *Breen* [1961] 3 225, Div.

Impotent spouse. *See* Incapacity to consummate marriage—Petition by impotent spouse, *post*.

Incapacity to consummate marriage—

Consummate—

Erectio and intromissio without ejaculatio—Whether 'consummation'. *R v R* (otherwise *F*) [1952] 1 1194, Div.

Evidence—

Corroboration—Sole evidence of petitioner—Need of corroboration. *Hodgkins v Hodgkins* [1950] 1 619, CA.

Husband's incapacity—

Children born in wedlock—Wife's evidence as to paternity—Admissibility. *Burgess* (otherwise *Leadbetter*) v *Burgess* [1937] 1 374, Div.

Failure to consummate after reasonable time—Seven days' cohabitation—Husband giving false reasons for failure to attempt intercourse. *B* (otherwise *S*) v *B* [1958] 2 76, Div.

Penetration—Whether any penetration, however transient, amounts to consummation of the marriage. *W* (otherwise *K*) v *W* [1967] 3 178, Div.

Impotency quoad hunc—

Birth of child to respondent—Evidence by petitioner of non-access—Admissibility. *Farnham v Farnham* (otherwise *Daniels*) [1936] 3 776, Div.

Petition by impotent spouse—

Competency—Need of repudiation of marriage by potent spouse. *Harthan v Harthan* [1948] 2 639, CA.

Factors to be considered—All the circumstances, including respondent spouses's attitude and reaction to the position, to be regarded—Whether a decree just and equitable in all the circumstances. *Pettit v Pettit* [1962] 3 37, CA.

Pre-marital agreement that marriage should be for companionship only—Mental reservation by petitioner regarding consummation later—Parties both of advanced years at time of marriage. *Morgan v Morgan* (otherwise *Ransom*) [1959] 1 539, Div.

Practical impossibility of consummation—

Date for ascertaining—Remediable by minor operation without danger. *S v S* (otherwise *C*) [1954] 3 736, Div.

Failure to undergo operation or treatment—Offer at trial to undergo operation—Genuineness of offer. *M v M* (otherwise *B*) [1956] 3 769, Div.

NULLITY (cont)

Incapacity to consummate marriage (cont)—

Practical impossibility of consummation (cont)—

Onus of proof—Admissibility of evidence up to time of hearing—Adjournment—Further evidence on appeal as regards medical examination after the trial—Matrimonial Causes Rules 1957, (S I 1957 No 619), r 24(2)—R S C Ord 58, r 9(2). **S v S (otherwise W)** [1962] 2 816, CA.

Wife's incapacity—

Invincible repugnance—Psychiatric or physical aversion rendering wife incapable of intercourse—Arranged marriage—Wife taking dislike to husband at first meeting on occasion of marriage ceremony—Wife proceeding with marriage in obedience to parents' wishes—Wife unwilling to marry husband or to have sexual intercourse with him. **Singh v Singh** [1971] 2 828, CA.

Physical defect of wife—Operation for enlargement of vagina having good chance of success—Consummation with partly artificial vagina. **S v S (otherwise W)** (No 2) [1962] 3 55, CA.

Physical defect of wife—Provision of artificial vagina—Incurability of defect. **D v D** [1954] 2 598, Div.

Wife registered as male at birth—Wife later undergoing sex-change operation—Provision of artificial vagina—Whether wife a woman for purposes of marriage—Whether wife capable of consummating marriage. **Corbett v Corbett (otherwise Ashley)** [1970] 2 33, Div.

Income tax—

Married person's allowance—

Effect of nullity decree. *See* **Income tax** (Husband and wife—Married person's allowance—Nullity decree).

Indian divorce. *See* **Nullity** (Remarriage—Former marriage dissolved by decree under Indian and Colonial Divorce Jurisdiction Acts 1926 and 1940).

Insanity—

Party at time of marriage of unsound mind or subject to recurrent fits of insanity—

Fits—Unsound mind—Insanity—Matrimonial Causes Act 1937, s 7(1)(b). **Smith v Smith (otherwise Hand) (by her guardian)** [1940] 2 595, Div.

Party suffering from mental disorder of such a kind as to be unfitted for marriage and the procreation of children—

Subject to recurrent attacks of insanity—Insanity—Mental disorder—Mental Health Act 1959, s 4—Matrimonial Causes Act 1965, s 9(1)(b) (ii) (iii). **Bennett v Bennett** [1969] 1 539, Div.

Jurisdiction—

Celebration of marriage in England—

Husband domiciled in Italy marrying woman in Italy—Husband obtaining decree of divorce in Mexico and thereafter marrying Danish wife in England—Husband petitioner neither resident nor domiciled in England. **Padolecchia v Padolecchia (otherwise Leis)** [1967] 3 863, Div.

Parties domiciled in Scotland—Petitioner resident in England—Petition on ground of respondent's impotence. **Hill (otherwise Petchey) v Hill** [1959] 3 754, Div.

Wife petitioner domiciled and resident in England—Husband neither domiciled nor resident in England when petition presented—Nullity jurisdiction over void marriages by reason of celebration of marriage in England but not over voidable marriages. **Ross Smith v Ross Smith (otherwise Radford)** [1962] 1 344, HL.

Domicile—

French person's marriage in England—French domicile—Marriage invalid according to French law—Nullity decree pronounced by French court—Competency of English petition. **Galene v Galene (otherwise Galice)** [1939] 2 148, Div.

Marriage in England—Petitioner domiciled and resident in England at time of marriage and resident in England when petition presented—Husband domiciled and resident in Canada. **Casey v Casey** [1949] 2 110, CA.

Marriage in France—Petitioner wife born in England of English parents, and resident in England when petition presented—Respondent domiciled and resident in France. **De Reneville (Comtesse) (otherwise Sheridan) v De Reneville (Comte)** [1948] 1 56, CA.

Petitioner domiciled in America—Both parties resident in England—Ceremony in England—Petition for decree of nullity on ground of wilful refusal to consummate. **Hutter v Hutter (otherwise Perry)** [1944] 2 368, Div.

Petitioner domiciled in Canada—Both parties resident in England—Ceremony in England—Petition for decree of nullity on ground of wilful refusal to consummate—No appearance by respondent. **Easterbrook v Easterbrook (otherwise Jervis)** [1944] 1 90, Div.

Petitioner domiciled in England—Ceremony in Australia—Respondent neither resident nor domiciled in England—No appearance by respondent. **White (otherwise Bennett) v White** [1937] 1 708, Div.

Petitioner wife domiciled in England—Hindu husband—Marriage in India according to rites of Arya Samaj sect—Marriage monogamous in its inception—Hindu husband if becoming orthodox Hindu free to marry second wife—Possibility of husband's subsequent polygamous marriage no bar to relief sought under matrimonial law of England. **Mehta (otherwise Kohn) v Mehta** [1945] 2 690, Div.

Polygamous marriage—

Marriage potentially polygamous at date of ceremony—Monogamous at date of proceedings. **Cheni (otherwise Rodriguez) v Cheni** [1962] 3 873, Div.

Residence—

Petition alleging husband's wilful refusal and incapacity—Husband domiciled in Scotland—Husband and wife resident in England—Matrimonial Causes Act 1950, s 8(1)(a). **Ramsay-Fairfax (otherwise Scott-Gibson) v Ramsay-Fairfax** [1955] 3 695, CA.

Petitioner resident in England at time of petition—Respondent resident in Guernsey—Marriage in Guernsey—Wilful refusal to consummate—Law to be applied. **Robert (otherwise De La Mare) v Robert** [1947] 2 22, Div.

NULLITY (cont)

Jurisdiction (cont)—

Residence (cont)—

Real and substantial connection with England—Celebration of marriage in England—Husband domiciled in Ohio—Wife resident and domiciled in England at date of marriage—Parties living in England for six months after marriage and then moving to Ohio—Non-consummation of marriage—Wife leaving husband and returning to England—Wife presenting petition for nullity after five months' residence in England—Whether court having jurisdiction on basis of original matrimonial residence or wife's real and substantial connection with England—Matrimonial Causes Act 1965, s 40(1). **Kern v Kern** [1972] 3 207, FamD.

King's Proctor—

Intervention to show cause against decree nisi being made absolute—

Onus of proof—Undefended petition for nullity—Wilful refusal to consummate marriage—

Decree nisi granted—King's Proctor alleging marriage consummated—Whether affirmative proof necessary. **Bluff v Bluff (otherwise Kelly)** [1946] 2 63, Div.

Maintenance. *See* Financial provision and property adjustment—Maintenance, *ante*.

Marriage by proxy. *See* Domicile—Marriage by proxy, *ante*.

Medical evidence. *See* Evidence—Medical evidence, *ante*.

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Principles to be applied in determining whether inspectors should be appointed—Practice.

Practice Direction [1963] 1 611, Div.

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Procedure—Attendance not required to give evidence—Payment of fees. **Practice Direction** [1968] 3 828, Div.

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Petitioner agreeing to be converted to Hindu faith—

Ceremony of conversion conducted in Hindustani and in presence of respondent—

Conversion ceremony also marriage ceremony—Marriage ceremony a nullity. **Mehta (otherwise Kohn) v Mehta** [1945] 2 690, Div.

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Cross-petition—

Petition by husband on ground of wife's impotence—Cross-charge of desertion—Need to file cross-petition—Inclusion in same document as answer. **Pickett v Pickett (otherwise Moss)** [1951] 1 614, Div.

Form of petition—

Children or issue—Reference to there being no other children of the family. **Practice Note** [1959] 2 163, Div.

Use of printed forms sold by law stationers—Matrimonial Causes Rules 1971 (S I 1971 No 953), r 9, App 2, Form 2. **Practice Direction** [1971] 3 288, Div.

Parties—

Petition by next friend—Petitioner said to be 'of unsound mind, not so found by inquisition'—

Reasonable ground for thinking petitioner capable of managing affairs—Dismissal of petition. **J (or se B) (by her next friend) v J** [1952] 2 1129, Div.

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Inclusion of surname of wife prior to marriage ceremony no longer necessary. **Practice Direction** [1973] 2 880, FamD.

Polygamous marriage—

Jurisdiction. *See* Jurisdiction—polygamous marriage, *ante*.

Relief—

Marriage in England—Marriage with Indian already lawfully married in India according to Hindu law—Hindu law permitting polygamy—Hindu marriage recognised as valid in English law—Whether English ceremony of marriage a nullity. **Baindail (otherwise Lawson) v Baindail** [1946] 1 342, CA.

Petitioner domiciled in England—Marriage in Egypt with Moslem domiciled in Egypt—Law Reform (Miscellaneous Provisions) Act 1949, s 1(1) (2). **Risk (otherwise Yerburch) v Risk** [1950] 2 973, Div.

Petitioner going through a form of marriage with Hindu temporarily resident in England—Respondent already married to Hindu woman in India—Hindu law permitting polygamy—Hindu law recognised in England—Hindu marriage valid—English ceremony of marriage a nullity. **Srini Vasan (otherwise Clayton) v Srini Vasan** [1945] 2 21, Div.

Practice—

Allegation of wilful refusal—

Investigation—Petition alleging fits of epilepsy and wilful refusal to consummate marriage—Cross-charge of wilful refusal to consummate marriage—Finding that respondent subject to recurrent fits of epilepsy at time of marriage—Question of wilful refusal to consummate not investigated—Whether necessary to investigate question of wilful refusal—Matrimonial Causes Act 1950, s 8(1)(b). **Iddenden (otherwise Brians) (by her next friend) v Iddenden** [1958] 3 241, Div.

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Incapacity—Whether particulars will be ordered of plea contained in the petition of a female petitioner alleging incapacity. **W (otherwise B) v W** [1944] 1 446, Div.

Trial—

Circuit—Trial of matrimonial causes on circuit. **Practice Note** [1958] 3 352, Div.

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Power of court to order blood tests—Supreme Court of Judicature (Consolidation) Act 1925, ss 32, 103(1)—Matrimonial Causes Act 1950, s 8(1)(d)—Matrimonial Causes Rules 1957, (S 1 1957 No 619), r 24 R S C Ord 37A, r 1, Ord 50, r 3. **W v W (No 4)** [1963] 2 841, CA.

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Discovery of existence of grounds for decree—

Belief of husband—Matrimonial Causes Act 1937, s 7(1)(d), proviso (iii). **Smith v Smith** [1947] 2 741, CA.

Evidence—

Birth of child—Admissibility of evidence of non-access before marriage ceremony—Rule in **Russell v Russell**—Matrimonial Causes Act 1937, s 7(1)(d). **Jackson v Jackson (otherwise Prudom)** [1939] 1 471, Div.

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Petition filed more than a year after marriage—Concealment by wife—Whether time limit could be extended—Matrimonial Causes Act 1937, s 7(1)(d), proviso (ii). **Chaplin v Chaplin** [1948] 2 408, CA.

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Property adjustment. *See* **Financial provision and property adjustment, ante**.

Recognition of foreign decree—

Basis of recognition—

Real and substantial connection between petitioner and foreign country—Wife leaving husband to go and live in foreign country with intention of marrying national of that country—Wife obtaining decree of nullity in competent court of foreign country after 12 months' residence there—Whether decree should be recognised by English court. **Law v Gustin (formerly Law)** [1976] 1 113, FamD.

Contrary to justice—

Maltese husband marrying English wife at register office in England—Husband a Roman Catholic—Marriage valid by English law but voidable by Maltese law—Decree of nullity granted to husband in Malta—Whether decree recognised in English court. **Lepre v Lepre** [1963] 2 49, Div.

Maltese husband with domicile of choice in England marrying English wife at register office—Husband a Roman Catholic—Husband resuming domicile of origin in Malta—Refusal of wife to go to Malta—Decree of nullity granted to husband in Malta based on Maltese domicile of parties by virtue of husband's resumed domicile—Whether decree recognised by English court—Whether husband in desertion. **Formosa v Formosa** [1962] 3 419, CA.

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Residence in Switzerland—Swiss decree of nullity on ground of husband's impotence recognised by Italian courts—Recognition by English court. **Abate v Cauvin (formerly Abate otherwise Cauvin)** [1961] 1 569, Div.

Practice—

Oath as to domicile or full statement of facts to be submitted, as case requires. **Practice Direction** [1968] 1 400, Prob.

Residence of parties within jurisdiction of German court—

Decree of German court annulling marriage but not treating it as non-existent—Decree a nullity by German law owing to its not having treated the marriage as non-existent—Recognition of decree by English court. **Merker v Merker** [1962] 3 928, Div.

Remarriage—

Former marriage dissolved by decree under Indian and Colonial Divorce Jurisdiction Act 1926 and 1940—

Remarriage of wife less than six months after decree—Earlier Indian statute prohibiting remarriage for six months after decree—Whether second marriage valid—Indian Divorce Act 1869, (Act No 4 of 1869), s 57—Indian and Colonial Divorce Jurisdiction Act 1926, s 1(1), proviso (b). **Buckle v Buckle (otherwise Williams)** [1955] 3 641, Div.

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NULLITY (coit)

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Duty of doctor—Doctor requested by patient to disclose confidential information to named person before presentation of petition—Duty of doctor—Matrimonial Causes Act 1937, s 7(1)(c). **C v C** [1946] 1 562, Assizes.

Wilful refusal to consummate marriage—

Consummate—

Agreement by parties to use contraceptives for limited period—Wife wishing to have child—Husband persisting in use of contraceptive—Coitus interruptus—Whether marriage consummated—Whether acquiescence by wife agreement not to have sexual intercourse for a limited period bar to relief—Matrimonial Causes Act 1937, s 7(1)(a). **Cowen v Cowen** [1945] 2 197, CA.

Coitus interruptus—Whether amounting to consummation—Matrimonial Causes Act 1937, s 7(1)(a). **Grimes (otherwise Edwards) v Grimes** [1948] 2 147, Div. **White (otherwise Berry) v White** [1948] 2 151, Div.

Coitus interruptus—Whether amounting to consummation. **Cackett (otherwise Trice) v Cackett** [1950] 1 677, Div.

Insistence by wife on use of contraceptives by husband—

Acquiescence by husband—Whether preventing consummation of marriage—Matrimonial Causes Act 1937, s 7(1)(a). **Baxter v Baxter** [1947] 2 886, HL.

Refusal—

Indecision not refusal—Refusal distinguished from neglect. **S v S (otherwise C)** [1954] 3 736, Div.

Refusal to arrange religious ceremony—

Marriage at register office—Mutual intention to have subsequent church ceremony—Parties being Roman Catholics knew that consummation could only follow after church ceremony—Failure by husband to arrange religious ceremony despite repeated requests by wife—Refusal constituting wilful refusal to consummate. **Jodla v Jodla (otherwise Czarnomska)** [1960] 1 625, Div.

Marriage at register office—Mutual intention to hold subsequent religious ceremony—Parties being Sikhs knowing that consummation could only follow religious ceremony—Refusal by husband to arrange ceremony—Refusal constituting refusal to consummate. **Kaur v Singh** [1972] 1 292, CA.

Relevant considerations—

Result of decree to bastardise child—Wife pregnant by husband at date of marriage—Child born subsequently—Delay—Whether grounds for withholding decree—Matrimonial Causes Act 1937, s 7(1)(a). **Dredge v Dredge (otherwise Harrison)** [1947] 1 29, Div.

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Definite decision arrived at without just excuse—Duty of judge—Matrimonial Causes Act 1937, s 7(1)(a). **Horton v Horton** [1947] 2 871, HL.

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Acceptance of risk—

Foreseeable but improbable risk—

Rugby football club in occupation of football ground—Concrete wall seven feet three inches from touchline—Compliance in that respect with byelaws of Rugby Football League—Injury to visiting player in collision with wall—Such an injury foreseeable but improbable—Whether occupier liable—Whether player had willingly accepted risk of playing on football ground which complied with league's byelaws—Occupiers' Liability Act 1957, s 2(1)(2)(5). **Simms v Leigh Rugby Football Club Ltd** [1969] 2 923, Assizes.

Act of unauthorised persons—

Reasonable precautions—

Lift in business premises—Accident to tenant—Liability of landlord for unauthorised tampering with lift. **Rochman v J & E Hall Ltd** [1947] 1 895, KBD.

Activities on land—

Static conditions of land connected with activities—

Railway—Level crossing—Licensee—Level crossing only access to village—Plaintiff inhabitant of village—Lawfully using crossing—Fell on uneven sleepers and was injured by train—Whether general duty of care on part of corporate body charged with running the railway extended to static conditions of railway track—Whether that duty limited by common law duty owed by the occupier of the railway lines to the plaintiff as licensee. **Comr for Railways v McDermott** [1966] 2 162, PC.

Carriage of passengers—

Safety of premises—

Implied warranty—Defective paving near edge of station platform—Injury to passenger—Breach of implied warranty that premises reasonably safe. **Protheroe v Railway Executive** [1950] 2 1093, KBD.

Station platform—Fall from platform—Edge marked by white lines—Fog. **Schlarb v London & North Eastern Ry Co** [1936] 1 71, KBD.

Station platform—Snow on platform—Delay in sanding and salting—Porter responsible otherwise urgently engaged—Liability of Railway Executive for injury to passenger. **Tomlinson v Railway Executive** [1953] 1 1, CA.

Child trespasser—

Air raid shelter on public green—

Shelter maintained by local authority—Electric cable placed on ground and connected to ventilating fans in shelter—Child electrocuted while playing in air-raid shelter—Liability of local authority—Child a trespasser and therefore liability excluded. **Walder v Mayor, Aldermen and Burgesses of the Borough of Hammersmith** [1944] 1 490, KBD.

Concealed danger—

Duty to child trespasser likely to come on to property—Danger created by occupier—Child not capable of appreciating danger—Contractors engaged in demolition of warehouse—Contractors lighting fires on premises—Contractors leaving premises unguarded—Plaintiff five year old child—Plaintiff entering premises and falling into fire—Contractors having warned off children, including plaintiff, on previous occasions. **Pannett v P McGuiness & Co Ltd** [1972] 3 137, CA.

Duty to child trespasser likely to come on to property—Danger created by occupier—Child not capable of appreciating danger—Electrified railway line—Failure by occupier to maintain adequate fence—Railway line passing alongside field open to public—Chain link fence marking boundary of railway line with field—Fence broken down and giving easy access to short cut across railway—Occupier notified that children had been seen on line—Failure to inspect or repair fence—Child walking on to line seriously injured by electrified rail—Whether occupier liable for breach of duty to child. **British Railways Board v Herrington** [1972] 1 749, HL.

Duty to child trespasser likely to come on to property—Danger created by occupier—Dangerous thing or something near it constituting allurements to child—Duty of occupier to consider the possibility of protecting potential trespassers—Circumstances in which occupier under a duty to take steps to protect potential trespassers—Relevant factors—Chance of trespassers coming on to land—Expense to occupier of taking appropriate steps—Occupiers piling rubble beneath high tension electric cable—Child trespasser playing on mound of rubble injured by touching cable. **Southern Portland Cement Ltd v Cooper** [1974] 1 87, PC.

Duty to trespassing child—

Presence of child on land reasonably foreseeable—Child injured on railway line adjacent to home at railway station—Negligent driving of trolley by railway employee—Whether presence of child reasonably foreseeable—Whether duty of care owed to child. **Videan v British Transport Commission** [1963] 2 860, CA.

Presence of children on land a likely occurrence—Demolition of house—Liability of demolition contractors—Site easily approached from open space—Wall in unsafe condition—Interference with wall by child—Collapse on child—Whether contractor's under a duty of care to child. **Davis v St Mary's Demolition & Excavation Co Ltd** [1954] 1 578, QBD.

OCCUPIER'S LIABILITY (cont)

Children—

Adequate measures to avoid danger to children—

Public park—Paddling-pool maintained by local authority—Sand at side of pool—Local authority aware of danger of broken glass—Sand raked by park-keeper—Raking not sufficient to remove glass embedded in sand—Whether steps taken by authority to remove glass adequate. **Ellis v Fulham Borough Council** [1937] 3 454, CA.

Breach of duty to warn child of danger—

Factors to be taken into account when determining whether breach—Duty of parents to protect child—Child of tender years—Licensee on land—Injured by falling into trench on housing estate in occupation of local authority—Danger obvious, but child too young to appreciate it—Whether authority in breach of duty. **Phipps v Rochester Corp** [1955] 1 129, QBD.

Danger or trap to child—

Tramway track used by public and children—Slow-moving trucks—Child riding on trucks—Whether child a licensee on truck—Whether defendants as owners of track under a duty of care. **Gough v National Coal Board** [1953] 2 1283, CA.

Waste land used for tipping—Child rolling down sloping bank and injured by broken glass—Whether presence of bank coupled with tins and broken glass constituting a trap. **Williams v Cardiff Corp** [1950] 1 250, CA.

Duty to guard against existence of danger—

Recreation ground—Chain fixed to chute by child—Chain injuring plaintiff child on slide—Chain left unsecured by attendant—Danger known to local authority occupiers. **Coates v Rawtenstall Borough Council** [1937] 3 602, CA.

Ignorance of danger—

Avoidance of duty to warn of danger—Recreation ground—Injuries caused by defective swing—Local authority ignorant of defect. **Sutton v Bootle Corp** [1947] 1 92, CA.

Licensee or trespasser—

Inference of licence—Rebuttal of inference—Knowledge of intrusion by children on to land—Steps taken to prevent intrusions—Injury on railway line adjacent to recreation ground—Access to line through hole made by children in fence—No evidence that occupier had acquiesced in intrusion by children—Whether child plaintiff a trespasser. **Edwards v Railway Executive** [1952] 2 430, HL.

Playground controlled by local authority—

Playground open to children of all ages—Chute with platform—Child of four and a half years falling through gap between rails on platform—Whether local authority liable. **Dyer v Ilfracombe Urban District Council** [1956] 1 581, CA.

Playground open to children of all ages—Chute with platform—Child of three years falling through gap between rails and floor of platform—Liability of local authority—Foreseeable danger—Similar accident in 1934—Damages—Injuries resulting in blindness. **Bates v Stone Parish Council** [1954] 3 38, CA.

Common duty of care—

Liability in contract—

Option to claim in contract or tort for breach of duty—Building occupied by building contractors—Building in course of erection—Plaintiff engaged as independent sub-contractor to work on building—Building contractors in breach of common duty of care—Plaintiff injured—Breach a cause of injury—Plaintiff guilty of contributory negligence—Contributory negligence precluding claim in contract—Whether plaintiff entitled to claim in tort for breach of duty to him as visitor—Occupier's Liability Act 1957, ss 2(1), 5(1). **Sole v W J Hall Ltd** [1973] 1 1032, QBD.

Nature of duty—

Reasonable care—Building site—Duty of building contractor—Duty of care towards servant of specialist sub-contractor coming on the building site—Bank on site muddy and slippery—Servant injured on slope—Whether contractors as occupiers having used reasonable care—Occupiers' Liability Act 1957, s 2(1). **Savory v Holland, Hannen and Cubitts (Southern) Ltd** [1964] 3 18, CA.

Concealed danger—

Child trespasser. *See* Child trespasser—Concealed danger, *ante*.

Licensee. *See* Duty of licensee—Concealed danger of trap, *post*.

Damages—

Financial loss—

Loss following from damage to property—Whether damages recoverable for financial loss as well as for physical damage—Occupiers' Liability Act 1957, s 1(3)(b). **A M F International Ltd v Magnet Bowling Ltd** [1968] 2 789, QBD.

Dangerous things—

Liability in negligence. *See* Negligence (Dangerous things—Occupier of premises).

Duty to independent contractor—

Safe means of access—

Window cleaner—Engaged as independent contractor to clean factory windows—No safe means of access—Liability of occupier. **Lavender v Diamints Ltd** [1949] 1 532, CA.

Duty to invitee—

Customers in shops etc—

Reasonable care—Unusual danger—Onus of proof that reasonable steps taken to avoid accident—Customer injured because of slippery substance on floor of shop—Burden on shopkeeper to explain how accident occurred or adduce evidence that reasonable steps taken to avoid accident. **Turner v Arding & Hobbs Ltd** [1949] 2 911, KBD.

Duty of shipowners to stevedores—

Duty to ensure that beams left in position secure—Beam left insecure by shipowners—Beam falling and injuring stevedores unloading ship—Cause of accident—Effect of failure to examine beam by stevedores or their employers—Factories Act 1937, s 60—Docks Regulations 1934 (S R & O 1934 No 279), Duties, para (d), reg 42. **Jerrard v T Roddam Dent & Son Ltd (Glen Line Ltd, third party)** [1948] 2 104, Assizes.

OCCUPIER'S LIABILITY (cont)**Duty to invitee (cont)—****Duty to ensure premises reasonably safe—**

Theatre—Ceiling damaged by enemy bomb blast—Failure to maintain premises—Member of audience injured by fall of ceiling—Whether defendants in breach of duty to ensure that theatre reasonably safe for purpose for which it was used. **Pope v St Helen's Theatre Ltd** [1946] 2 440, KBD.

Goods of invitee on premises—

Theft—Publican—Customer's motor cycle stolen from yard of public house—Whether breach of occupier's duty of care. **Tinsley v Dudley** [1951] 1 252, CA.

Independent contractor—

Employment of independent contractor to do work requiring special skill—Electrical wiring of offices defective—Premises re-wired by reputable electrical engineering company five years before date of accident—Defect not apparent—Whether occupier liable as a consequence of contractor's negligence. **Green v Fibreglass Ltd** [1958] 2 521, Assizes.

Innkeeper—

Extent of invitation—Private door—Plaintiff passing along unlighted passage and through door marked 'Private'. **Lee v Luper** [1936] 3 817, KBD.

Railway passengers—

Safety of station platform—Negligence. *See Negligence (Railway—Duty to passengers and invitees—Safety of station platform).*

Scope of invitation—

Stevedore—Stevedore working on defendant's ship—Stevedore going to after part of ship to find suitable skid for unloading work—Falling down hatch in badly lighted part of ship and injured—Whether an invitee. **Henaghan v Rederiet Forangirene** [1936] 2 1426, Assizes.

Standard of care—

Reasonable steps to guard against danger—Yard forming part of licensed premises—Customer slipping on vomit in yard late at night—Yard unlighted—Landlord having inspected yard earlier and cleaned it out—Whether danger one which landlord could reasonably be expected to guard against. **Simons v Winslade** [1938] 3 774, CA.

Unusual danger—

Fireman—Explosion—Exceptional and unnecessary dangers of fire and explosion created by occupiers—Fireman fighting fire on premises—Injured by explosion. **Merrington v Ironbridge Metal Works Ltd** [1952] 2 1101, Assizes.

Fireman—Mains supply of electricity to lighting circuit not cut off—Obsolete type of mechanism—Fireman electrocuted. **Hartley v Mayoh & Co** [1953] 2 525, Assizes, [1954] 1 375, CA.

Invitee's knowledge of danger—Appreciation of nature of risk—Defective doors of machine house on roof to which access had by ladder—Invitee's knowledge of defect—No warning or safeguards by occupier—Liability of occupier. **Smith v Austin Lifts Ltd** [1959] 1 81, HL.

Invitee's knowledge of danger—Workman—Complaints made by workman—Workman engaged on ship repairs—Faulty staging—Despite complaints defects not remedied by ship repairers—Workman falling from staging—Whether workman's knowledge of danger exonerating ship repairers from liability. **London Graving Dock Co Ltd v Horton** [1951] 2 1, HL.

Railway station—Person visiting railway station to meet passenger—Oily patch on platform. **Stowell v Railway Executive** [1949] 2 193, KBD.

Window cleaner—Defective window sash—Window safe for ordinary purposes. **General Cleaning Contractors Ltd v Christmas** [1952] 2 1110, HL.

Window cleaner—Plywood panel in window—Occupier's removal of bolts—Failure to inform cleaner. **Bates v Parker** [1953] 1 768, CA.

Use of chattels—

Defective chattel—Knowledge of occupier—Building operations—Defective ladder removed from building operation—Ladder put back by unknown person—Invitee injured using ladder—Onus on invitee to prove invitor's responsibility for or knowledge of replacement of ladder. **Woodman v Richardson and Concrete Ltd** [1937] 3 866, CA.

Works on premises—

Occupier carrying out work himself—Work not requiring special skill and knowledge—Standard of care and skill required—Outside door handle fixed by householder—Handle coming off door when pulled by tradesman—Tradesman injured—Whether occupier liable. **Wells v Cooper** [1958] 2 527, CA.

Duty to licensee—**Concealed danger or trap—**

Bridge over ditch—Canvasser visiting premises after dark—Only means of access to house over road across concrete bridge over ditch—Canvasser tripping and falling into ditch—Whether bridge over ditch a concealed danger. **Dunster v Abbott** [1953] 2 1572, CA.

Diving board over tidal area of bay—Board erected by defendants some years previously—Water outside area of defendants' occupation—Licensee injured in consequence of diving off board at low tide—No defect in board—Whether board a concealed danger—Whether fact that board had been erected by defendants some years previously altered the duty—Whether fact that danger arose from use of shallow sea outside area of defendants' occupation displaced duty. **Perkowski v City of Wellington Corp** [1958] 3 368, PC.

Duty to give warning—Passenger in lorry—Railway bridge over road—Headroom of bridge reduced—Passenger killed by contact with low bridge—No warning given to deceased—Duty of lorry driver to warn passenger. **Lewys v Burnett and Dunbar** [1945] 2 555, KBD.

Polished linoleum—Guest in house—Guest having observed that linoleum was polished but not suspecting it was slippery—Guest injured by slipping—Whether linoleum constituting a trap. **Pitt v Jackson** [1939] 1 129, KBD.

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Duty to licensee (cont)—

Concealed danger or trap (cont)—

Requisitioned property—Duty to repair—Liability of requisitioning authority—Unsafe ceiling—Occupation by family of five—Authority's agreement with husband—Injury to wife—Whether agreement for occupation by family a licence rather than tenancy—Whether requisitioning authority under duty of care to members of family as licensees. **Greene v Chelsea Borough Council** [1954] 2 318, CA.

Duty of care—

Distinction between duty to licensee and duty to invitee—Whether any distinction. **Slater v Clay Cross Co Ltd** [1956] 2 625, CA.

Involuntary encroachment—

Railway track—Licensees on walkway adjoining track—Duty to keep look-out for licensees on walkway adjoining track—Licensee involuntarily putting foot on sleepers of track following warning shout—Licensee struck by van on track. **Braithwaite v South Durham Steel Co Ltd** [1958] 3 161, Assizes.

Licensor's knowledge of danger—

Actual knowledge—Knowledge of potential danger—Public convenience—Injury caused by children tampering with grille—Liability of local authority. **Pearson v Lambeth Borough Council** [1950] 1 682, CA.

Reasonable appreciation of risk—Knowledge by licensor of facts constituting danger—Accident in dark—Risk not obvious to licensee—Defective steps of requisitioned house—Liability of requisitioning authority. **Hawkins v Coulsdon and Purley Urban District Council** [1954] 1 97, CA.

Exclusion of liability—

Notice—

Knowledge of terms of notice—Notice on land purporting to exclude liability—Knowledge of licensee of existence of notice but allegation of ignorance of most of its terms—Whether liability of licensor for negligence excluded—Whether conditions sufficiently brought to licensee's notice—Construction of licence—Whether exclusion of liability limited to static condition of the land. **Ashdown v Samuel Williams & Sons Ltd** [1957] 1 35, CA.

Race meeting—Safety precautions for spectators—Duty of organisers to spectators—Motor racing—Jalopy racing in field—Failure to take reasonable safety precautions—Notice at entrance to field excluding liability for accidents to spectators 'howsoever caused'—Notice addressed to 'the public'—Deceased a competitor in race—Deceased not a member of club organising meeting—Deceased signing on in morning at field as competitor in races to be held in afternoon—Notice not in position at entrance to field in morning—Exclusion of liability not drawn to deceased's attention when signing on—Deceased entering field in afternoon when notice in position—Deceased fatally injured while watching race in which not taking part—Injuries caused by inadequacy of safety ropes—Whether deceased's licence to enter field variable summarily on terms stated in notice at entrance to field—Whether notice effective to exclude organisers' liability for negligence—Occupiers' Liability Act 1957, s 2(1). **White v Blackmore** [1972] 3 158, CA.

Warning to visitor—

Sufficiency—Chimney sweep killed by carbon monoxide fumes while sealing up sweep-hole—Warnings by occupier disregarded—Special risks ordinarily incident to calling—Whether occupier liable—Occupiers' Liability Act 1957, s 2(2),(3)(b),(4)(a). **Roles v Nathan, Roles v Corney** [1963] 2 908, CA.

Financial loss. *See* Damages—Financial loss, *ante*.

Fire—

Escape to adjoining premises—

Negligence. *See* Negligence (Fire—Escape to adjoining premises).

Goods—

Liability for goods of invitee. *See* Duty to invitee—Goods of invitee on premises, *ante*.

Independent contractor. *See* Duty to independent contractor, *ante*.

Invitee or licensee—

Common interest in visit—

Hospital—Relative visiting sick patient in state hospital—Visit a matter of material common interest to plaintiff and hospital authority. **Slade v Battersea & Putney Group Hospital Management Committee** [1955] 1 429, QBD.

Entry on to premises on own business—

Canvasser—Visit to defendant's premises in order to do business with him—Defendant unwilling to do business—Canvasser injured on premises—Whether an invitee or licensee. **Dunster v Abbott** [1953] 2 1572, CA.

Forecourt of shop adjoining highway—

Forecourt not fenced off—Foot passenger stepping from highway on to forecourt—Injured because of defective paving of forecourt to shop—Forecourt in occupation of landlord of shop—Whether foot passenger an invitee or licensee on forecourt. **Jacobs v London County Council** [1950] 1 737, HL.

Material interest of occupier in visit—

Neighbour entering premises to attend invalid—Neighbour entering occupier's house at request of occupier to tend occupier's bedridden wife—Fall and injury to leg—Whether neighbour an invitee. **Jennings v Cole** [1949] 2 191, KBD.

Permission to use tools of occupier—

Plaintiff an invitee on premises—Plaintiff servant of contractors working on premises—Permission by occupier to plaintiff to use ladder—Choice by servant of defective ladder—Whether occupier liable to plaintiff as invitee for defect on ladder. **Johnson v Croggon & Co Ltd** [1954] 1 121, QBD.

Railway station—

Passenger—Part of station used for unloading mail bags—Passenger going on to that part—Nothing to show passengers should not go on that part—Passenger slipping on patch of oil—Whether passenger an invitee. **Blackman v Railway Executive** [1953] 2 323, CA.

OCCUPIER'S LIABILITY (cont)

Invitee or licensee (cont)—

Wife of tenant—

Business interest in common with landlord—Tenant of flat in block of flats—Wife keeping house for tenant—Defect in surface of courtyard to flats—Wife of tenant injured—Whether wife having sufficient business interest in common with landlord to make her an invitee—Whether landlord liable. **Anderson v Guinness Trust** [1949] 1 530, KBD.

Joint occupation. *See* Occupation—Occupation through licensee—Joint occupation, *post*.

Landlord—

Duty of care to visitors—

Lift in block of flats—Lift in occupation of landlord—Duty to take care that lift safe—Duty to invitees and licensees—Employment competent engineers to maintain lift—Defective repair carried out by engineers—Visitor in lift injured—Whether landlord liable. **Haseldine v C A Daw & Sons Ltd** [1941] 3 156, CA.

Liability for independent contractor—

Danger or trap—

Lift—Door left open—Occupier having contracted with independent contractor to keep lift in good working order—Plaintiff stepping through open lift door and falling down shaft—Liability of occupier. **Morgan v Incorporated Central Council of the Girls' Friendly Society** [1936] 1 404, KBD.

Nut and bolt weighing machine protruding above path level in railway station—Machine maintained by competent contractors—Whether occupiers liable. **Bloomstein v Railway Executive** [1952] 2 418, QBD.

Duty to invitee—

Performance entrusted to independent contractor—Liability for negligence of independent contractor—Stevodore's labourer injured by shore while unloading cargo from ship—Shore fixed by independent contractor—Whether an excuse that performance of duty of care entrusted to independent contractor. **Thomson v Cremin** (1941) [1953] 2 1185, HL.

Supervision of contractor—

Construction works—Valuable property of third party brought on to site—Duty to employ supervising architect—Building owner—Installation of equipment by separate specialist contractor—Firm of architects engaged by architect-employee of company associated with building owner—Specialist contractor's equipment damaged by flood water during erection of building—Building owner relying on building contractors—Liability of building owner—Occupiers' Liability Act 1957, ss 1, 2(4)(b). **AMF International Ltd v Magnet Bowling Ltd** [1968] 2 789, QBD.

Works of construction, maintenance or repair—

Incidental works—Protection against flooding—Construction works—Valuable property of third party brought on to site—Liability of site to flooding—Work necessary to protect third party's property from flooding—Whether works of 'construction, maintenance or repair'—Occupiers' Liability Act 1957, s 2(4)(b). **AMF International Ltd v Magnet Bowling Ltd** [1968] 2 789, QBD.

Negligence—

Delegation of occupier's duties—

Railway and transport executives—Railway station—Passenger on premises of different executive—Delegation of liabilities by British Transport Commission—Transport Act 1947, s 5(9)(a). **Bloomstein v Railway Executive** [1952] 2 418, QBD.

Factory flooded in exceptional storm—

Water mixed with oil—Floor rendered dangerously slippery—No want of care by occupiers—Accident through workman slipping—Liability of occupiers. **Latimer v AEC Ltd** [1953] 2 449, HL.

Occupation—

Local authority—

House unoccupied in consequence of compulsory purchase order—Notice of entry served on owner and tenant of house following compulsory purchase order—Notice stating local authority would enter and take possession of house on expiry of 14 days—House subsequently vacated by tenant and left unoccupied—House not secured or bricked up by local authority—House made ruinous in consequence of activities of vandals—Child trespasser entering house—Child injured in consequence of ruinous condition—Whether local authority occupiers—Whether liable to child for breach of duty. **Harris v Birkenhead Corp'n** [1976] 1 341, CA.

Occupation through licensee—

Joint occupation—Proprietors of club managed by licensees—Redecoration of club premises—Common duty of care towards servant of decorators—Plaster work on ceiling of restaurant—Bare electric wiring—Electricity switched on—Accident to plasterer—Whether proprietors in occupation of premises—Occupiers' Liability Act 1957, s 1. **Fisher v CHT Ltd** [1966] 1 88, CA.

Occupation through servant—

Inn managed by licensee employed by brewers—Manager having control of part of inn where business of sale of intoxicants not carried on—Manager's wife allowed to run own boarding-house business upstairs in private part of the inn—Second staircase (back stairs) to first floor not used by public or usually by lodgers—Handrail of back staircase from first floor ended above bottom of stairs—Back staircase unlit, but absence of light not due to negligence of manager—Lodger in private part of inn fell down stairs of back staircase—Whether brewers liable as 'occupiers'—Occupiers' Liability Act 1957, s 1(2). **Wheat v E Lacon & Co Ltd** [1966] 1 582, HL.

Scaffolding—

Contractor on building site—Scaffolding and staging for making working platforms provided by contractors—Staging positioned by sub-contractors—Accident to servant of sub-contractors caused by unstable working platform—Whether contractors in occupation or having control of working platform so as to be under common duty of care—Occupiers' Liability Act 1957, s 1(3). **Kearney v Eric Waller Ltd** [1965] 3 352, QBD.

OCCUPIER'S LIABILITY (cont)

Practice—

Option to claim in contract or tort for breach of duty. *See* Common duty of care—Liability in contract—Option to claim in contract or tort for breach of duty, *ante*.

Property adjoining highway—

Forecourt indistinguishable from pavement—

Duty to repair forecourt—Liability to passer-by. *Owens v Thomas Scott & Sons (Bakers) Ltd and Wastall* [1939] 3 663, Assizes.

Railway—

Duty to passengers and invitees—

Safety of station platform—Negligence. *See* Negligence (Railway—Duty to passengers and invitees—Safety of station platform).

Standard of care—

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Trespasser—

Child trespasser. *See* Child trespasser, *ante*.

Duty of occupier limited to avoidance of wilful or reckless acts—

Foreseeability test not relevant criterion—Degree of knowledge sufficient to impose duty—

Trespasser injured by train on private level crossing—Fact that occupier knew there was a likelihood of trespassers on crossing at some time or another not sufficient to impose duty. *Commissioners for Railways v Quinlan* [1964] 1 897, PC.

Visitor—

Permission to be on premises—

Involuntary act causing scope of permission to be exceeded—Railway—Employee of company owning rail track—Licence from proprietors of adjoining track to use walkway between tracks—Warning of danger from train on adjoining track causing employee to encroach on to adjoining track—Involuntary act—Licence not extending to adjoining track—Whether proprietors of adjoining track still under duty to employee as licensee. *Braithwaite v South Durham Steel Co Ltd* [1958] 3 161, Assizes.

Time limit—Effect of expiry of time limit—Visitor remaining on premises after expiry of time limit—Duty of occupier to make clear to visitor that permission subject to time limit—Public house—Owners permitting customer to be on premises for party—Party continuing after closing time—Whether customer a visitor or trespasser on premises after closing time. *Stone v Taffe* [1974] 3 1016, CA.

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OFFENSIVE WEAPONS

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Role in matrimonial litigation. *See* Divorce (Reconciliation—Practice—Machinery for exploring possibility of reconciliation with a view to determining whether there is reasonable probability of the parties being reconciled—Duty of court welfare officer).

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Authority to apply to Court of Appeal by way of appeal against committal order—Person committed not moving court himself—Industrial Court making committal orders against dockers—Appeal to Court of Appeal by Official Solicitor on ground that insufficient evidence to support committals. **Churchman v Joint Shop Stewards' Committee of the Workers of the Port of London** [1972] 3 603, CA.

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Discharge of oil to lighten vessel stranded in river—

Damage to adjoining foreshore—Need to prove negligence. *See* **Nuisance** (Negligence—Need to prove—Pollution of shore—Ship—Discharge of oil to lighten vessel stranded in estuary).

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Discharge of oil to lighten vessel stranded in estuary—

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Clause conferring option and also right of pre-emption—Whether option continued after failure to exercise right of pre-emption. *Du Sautoy v Symes* [1967] 1 25, ChD.

Three years certain—Provision for notice—Whether determinable at the expiration of three years. *Re Downes & Lobb's Contract* [1937] 4 324, ChD.

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Option to purchase leasehold reversion expectant on term of years granted by tenancy agreement—Option contained in deed of licence to assign term and exercisable only by assignee—Assignee not party to deed—Whether 'agreement respecting land'—'Interest in land'—Law of Property Act 1925, s 56(1). *Stromdale and Ball Ltd v Burden* [1952] 1 59, ChD.

Farm—

Option granted to colliery concern—Acquisition of assets of colliery concern by National Coal Board—Purported exercise of option by National Coal Board—Coal Industry Nationalisation Act 1946, s 5(1) (2), (7), Sch I, Part I, Part II, paras 9, 14, Sch II. *National Coal Board v Hornby* [1949] 2 615, ChD.

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Registration as estate contract—Official certificate of search obtained by subsequent purchaser of land showing no entry in respect of option—Application for search containing insufficiently clear description of land—Whether certificate conclusive in favour of purchaser—Whether option-holder entitled to specific performance against purchaser—Land Charges Act 1925, s 17(3). *Du Sautoy v Symes* [1967] 1 25, ChD.

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New lease—Inclusion in new lease of option to purchase. **Hill v Hill** [1947] 1 54, CA.

Notice of exercise of option—Notice to grantor's personal representatives—Whether valid. **Kennewell v Dye** [1949] 1 881, ChD.

Notice of exercise of option—Option conferred by tenancy agreement to purchase 'at any time' at fixed price—Term of tenancy agreement a five year's term—Property becoming subject to Rent Restrictions Acts after date of agreement—Tenant holding over as statutory tenant—Exercise of option while statutory tenant—Validity. **Longmuir v Kew** [1960] 3 26, ChD.

Provision for payment of interest on purchase money on expiration of notice—Lease then determined—Liability of original lessees for rent. **Cockwell v Romford Sanitary Steam Laundry Ltd** [1939] 4 370, CA.

Registration as land charge—Option not registered as land charge—Sale of reversion—Rejection by purchaser of purported exercise of option—Liability of lessor—Measure of damages. **Wright v Dean** [1948] 2 415, ChD.

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Jurisdiction to order commissioner to investigate—Discretion of commissioner—Whether leave would be given for mandamus against commissioner—Parliamentary Commissioner Act 1967, s 5. *Re Fletcher's Application* [1970] 2 527, CA.

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Ceylon—

Validity. *See* **Ceylon** (Election—No appeal to Crown—Validity of Parliamentary election).

PAROCHIAL CHURCH COUNCIL

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Release from prison. *See* **Prison** (Release on licence).

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PART PERFORMANCE

Acts constituting part performance—

Contract for sale of land. *See* **Sale of land** (Part performance of contract).

Contract. *See* **Contract** (Part performance).

PARTIAL INTESTACY

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PARTICULARS

Census return—

Private household. *See* **Census** (Form of return—Private household—Particulars).

Pleading. *See* **Pleading** (Particulars).

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Action in name of company incorporated in foreign state. *See* **Writ** (Parties—Action in name of company incorporated in foreign state).

Adding persons as parties. *See* **Practice** (Parties).

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PARTIES (cont)

- Death of party—
 - Privy Council—
 - Death before appeal heard. *See* **Privy Council** (Abatement of appeal—Death of party).
- Declaration—
 - Validity of marriage. *See* **Marriage** (Validity—Declaration—Parties to proceedings).
- Description of parties. *See* **Practice** (Parties—Description of parties).
- Divorce proceedings. *See* **Divorce** (Parties).
- Joinder—
 - Civil action. *See* **Practice** (Parties—Joinder of parties).
- Misnomer—
 - Amendment. *See* **Practice** (Parties—Misnomer—Amendment).
- Mortgage—
 - Proceedings by mortgagee. *See* **Mortgage** (Action by mortgagee for possession—Parties).
- Mortgaged property—
 - Possession of mortgaged property. *See* **Mortgage** (Possession of mortgaged property—Persons not parties to mortgage claiming to be entitled to possession).
- New tenancy—
 - Application—
 - Business premises. *See* **Landlord and tenant** (Business premises—Application for new tenancy—Parties to application).
- Nullity suit. *See* **Nullity** (Petition—Parties).
- Originating summons—
 - Separate representation of parties with same interest. *See* **Originating summons** (Parties—Construction summons—Parties with same interest represented by separate counsel).
- Representation—
 - Consistory court. *See* **Ecclesiastical Law** (Consistory court—Representation of parties).
- Striking out party. *See* **Practice** (Parties—Striking out party).
- Substitution. *See* **Practice** (Parties—Substitution).
- Wardship proceedings. *See* **Ward of court** (Application to make minor ward of court—Parties).

PARTNERSHIP

- Accounts—
- Audit—
 - Auditor's certificate—Circumstances in which court having jurisdiction to set aside auditor's certificate. *See* **Auditor** (Certificate—Circumstances in which court having jurisdiction to interfere—Partnership agreement providing for retirement of partner—Agreement providing for account to be taken by auditor of income and expenditure of partnership practice).
- Agreement—
 - Characteristics—
 - Whether agreement for payment of commission on orders obtained partnership agreement. *See* **Canada** (Quebec—Partnership—Agreement for payment of commission on orders obtained—Whether partnership agreement).
- Arbitration. *See* **Dissolution**—Arbitration, *post*.
- Authority of one partner to bind firm—
 - Partnership with third party for single venture—
 - Transaction involved was one that would be in usual way of partnership business—Firm of produce merchants—Joint venture with plaintiff in purchase and re-sale of potatoes arranged by one partner—Whether partnership bound—Partnership Act 1890, s 5. **Man v D'Arcy** [1968] 2 172, ChD.
- Company in substance a partnership—
 - Compulsory winding-up of company—
 - Just and equitable. *See* **Company** (Compulsory winding-up—Just and equitable—Company in substance a partnership).
- Demonstrative legacy. *See* **Administration of estates** (Legacy—Demonstrative legacy—Partnership).
- Dissolution—
 - Appointment of receiver—
 - Fund in court—Partnership insolvent—Charging orders on fund in court—Priority—Solicitors Act 1932, s 69. **Newport v Pougher** [1937] 1 276, CA.
 - Retirement of partner. *See* **Receiver**—Appointment—Retirement of partner, *post. post*.
 - Arbitration—
 - Stay of proceedings—Partnership deed providing for reference of disputes to arbitration—Action for dissolution started by partner—Application for receiver and manager—Claim that dissolution 'just and equitable'—Whether action would be stayed pending arbitration—Partnership Act 1890, s 35(d)(f). **Olver v Hillier** [1959] 2 220, ChD.
 - Death—
 - Partnership for joint lives—Whether interest in partnership business passed on death. **Burdett-Coutts v Inland Revenue Comrs** [1960] 3 153, ChD.
 - Right to profits—Partnership at will—Death of partner—Share of deceased settled—Apportionment—Partnership Act 1890, s 33(1). **Re Robbins** [1941] 2 601, ChD.
 - Discretion of court—
 - Appropriate remedy—Farming partnership—Termination of partnership—Injunction sought to restrain one partner from entering on land—Winding-up the proper remedy. **Harrison-Broadley v Smith** [1964] 1 867, CA.

PARTNERSHIP (cont)

Dissolution (cont)—

Effect—

Partnership property—Duties of partners—Good faith—Leasehold interest—Interest remaining undistributed asset after dissolution—Acquisition of freehold reversion by one of former partners—Whether partner accountable to other former partners in respect of freehold interest. *Thompson's Trustee in Bankruptcy v Heaton* [1974] 1 1239, ChD.

Incapacity of partner—

Incapacity to perform fair share of the work of the practice—Medical partnership—Provision that if either partner incapacitated from performing fair share of work for nine consecutive months other partner might by notice determine partnership—Partner suffering cerebral haemorrhage—Partner returning to practice nine months later—Evidence that partner fit to resume work only on part-time basis under supervision—No prospect of resuming work on full-time basis for further two months—Validity of notice to determine partnership. *Peyton v Mindham* [1971] 3 1215, ChD.

Indemnity of outgoing partner—

Partnership debts and liabilities—Income tax. *Stevens v Britten* [1954] 3 385, CA.

Notice—

Partnership to continue notwithstanding retirement of one partner—Notice of dissolution by one partner—Partnership at will—Partnership Act 1890, ss 26(1), 32(c). *Abbott v Abbott* [1936] 3 823, ChD.

Persons who may apply—

Salaried partner—Partnership having ceased in fact—Circumstances in which winding-up order may be refused. *Stekel v Ellice* [1973] 1 465, ChD.

Duty of solicitor advising partnership. *See Solicitor* (Duty—Advice to partnership).

Employment—

Period of continuous employment—

Change of partners. *See Employment* (Continuity—Change of employer—Partnership—Employment by partnership—Change in partners).

Executor—

Appointment of firm as. *See Executor and administrator* (Executor—Appointment—Appointment of firm).

Trading for tax purposes—

Partnership business—Dealing in land. *See Income tax* (Trade—Executors—Partnership business—Dealing in land).

Existence of partnership disputed—

Appointment of receiver sought—

Interlocutory application. *Floydd v Cheney* [1970] 1 446, ChD.

Injunctions—

Delivering up of documents wrongfully taken by purported partner—Restraint on use of documents or confidential information. *Floydd v Cheney* [1970] 1 446, ChD.

Persons working together to form a company—

Question of mixed fact and law—Partnership Act 1890, s 1(1). *Keith Spicer Ltd v Mansell* [1970] 1 462, CA.

Expulsion—

Misconduct—

Power of partners—Exercise by single partner—Provision in partnership deed that if any partner guilty of default the other partners might by notice expel him from the partnership—Notice given by one partner to expel the other two for misconduct—Whether he had power to do so under partnership deed—Effect of Law of Property Act 1925, s 61. *Re A Solicitors' Arbitration* [1962] 1 772, ChD.

Farming—

Income tax. *See Income tax* (Farm—Mixed farm—Partnership).

Fiduciary relationship. *See Relationship between partners*—Good faith—Fiduciary relationship, *post*.

Foreign judgment against—

Enforcement—

Action in England. *See Conflict of laws* (Foreign judgment—Enforcement—Action in England—Foreign judgment against partnership).

Husband and wife—

Beneficial interest—

Assessment. *See Husband and wife* (Property—Partnership business—Beneficial interests).

Illegality—

Betting office. *See Gaming* (Betting—Licensed betting office—Partnership).

Incapacity of partner. *See Dissolution*—Incapacity of partner, *ante*.

Income tax—

Additional assessment—

Time limit. *See Income tax* (Additional assessment—Time limit—Partnership).

Generally. *See Income tax* (Partnership).

Retired partner—

Earned income relief. *See Income tax* (Earned income relief—Earned income—Income immediately derived from carrying on or exercise of trade, profession or vocation—Immediately derived—Partnership).

Indemnity of outgoing partner. *See Dissolution*—Indemnity of outgoing partner, *ante*.

Joint lives. *See Dissolution*—Death—Partnership for joint lives, *ante*.

Medical practitioner—

Clause in partnership agreement prohibiting retiring partner carrying on practice within ten mile radius—

Validity. *See National health service* (Partnership—Goodwill—Clause in partnership agreement prohibiting retiring partner carrying on practice within ten mile radius—Validity).

PARTNERSHIP (cont)

Misconduct of partner—

Expulsion. *See* Expulsion—Misconduct, *ante*.

Nature—

Relationship of partners—

Salaried partnership—Two partners—One partner providing all capital and taking profits—Other partner paid a fixed salary—Other partner held out as partner—Circumstances in which relationship one of partnership rather than employment—Partnership Act 1890, ss 1(1), 27(1). *Stekel v Ellice* [1973] 1 465, ChD.

Notice of dissolution by one partner. *See* Dissolution—Notice, *ante*.

Partnership property—

Conversion—

Joinder of parties—Conversion of partnership property by one of two partners—Cheques payable to partnership indorsed by one partner and paid into third person's banking account—Right of aggrieved partner to sue alone without joining guilty partner—RSC Ord 16, r 11. *Baker v Barclays Bank Ltd* [1955] 2 571, Assizes.

Effect of dissolution. *See* Dissolution—Effect—Partnership property, *ante*.

Ownership of assets—

No partnership agreement except as to division of profits. *Miles v Clarke* [1953] 1 779, ChD.

Property—

Contract for sale of share of partnership property—

Registration as general equitable charge. *See* Land charge (General equitable charge—Contract for sale of one-eighth share of partnership property).

Share of partnership property—

Contract for sale of share—Registration as estate contract. *See* Land charge (Estate contract—Contract to convey or create legal estate—Contract for sale of share of partnership property).

Receiver—

Appointment—

Dissolution of partnership. *See* Dissolution—Appointment of receiver, *ante*.

Retirement of partner—Remaining partners continuing in partnership—Agreement for retirement making no provision for valuation of retiring partner's share in partnership assets—Agreement not effecting dissolution—Professional firm—Circumstances in which court will appoint receiver—Whether retiring partner entitled to sale—Whether receiver should be appointed. *Sobell v Boston* [1975] 2 282, ChD.

Relations between partners—

Good faith—

Fiduciary relationship—When partner a trustee. *Gordon v Gonda* [1955] 2 762, CA.

Partnership property—Leasehold interest—Underlease of premises where partnership business carried on—Acquisition of leasehold reversion by one of the partners—Dissolution of partnership—Appointment of receiver—Rent in arrears—Landlord's right to claim possession with leave of court—Whether fact that landlord a partner raising any equity which would preclude court from giving leave. *Brenner v Rose* [1973] 2 535, ChD.

Restraint of trade. *See* Restraint of trade by agreement (Partnership).

Retiring partner—

Liability—

Person holding out—Debts incurred after dissolution—Liability of retiring partner—Unauthorised use of retiring partner's name—Partnership Act 1890, ss 14(1), 36(1)(3). *Tower Cabinet Co Ltd v Ingram* [1949] 1 1033, KBD.

Single venture—

Authority of one partner to bind firm. *See* Authority of one partner to bind firm—Partnership with third party for single venture, *ante*.

Theft by one partner of partnership property. *See* Criminal law (Theft—Property belonging to another—Partnership property).

Tort—

Liability of firm—

Ordinary course of business of firm—Libel—Qualified privilege—Communication on behalf of firm sent by one partner without malice—Another partner actuated by malice—Latter liable although partner sending the communication was not liable—Partnership Act 1890, s 10. *Meekins v Henson* [1962] 1 899, QBD.

Total income for tax purposes—

Share of partnership profits. *See* Income tax (Total income—Share of profits—Partnership).

Value added tax—

Registration. *See* Value added tax (Registration—Partnership).

PARTY WALL

Boundary. *See* Boundary (Party wall).

PASS

Free travel—

Exclusion of liability of carriers for negligence. *See* Carriers (Negligence—Exclusion of liability—Passengers—Free pass).

PASSENGER

Aircraft—

Carriage. *See* Carriage by air (Carriage of passengers).

Contributory negligence—

Road accident. *See* Negligence (Contributory negligence—Road accident—Passenger in car).

Exclusion of liability to passenger in vehicle. *See* Negligence (Volenti non fit injuria—Consent to risk of injury—Agreement to exclude liability—Passenger in vehicle).

Express carriage. *See* Road traffic (Express carriage).

PASSENGER (cont)

Motor vehicle—

Duty of driver to take care. *See Negligence* (Duty to take care—Driver of motor vehicle—Duty to passenger in vehicle).

Insurance. *See Motor insurance*

Negligence—

Injuring third party. *See Motor insurance* (Using vehicle or causing or permitting vehicle to be used on road without policy being in force—Passenger's negligence injuring third party).

Omnibus—

Injury to passenger alighting from bus. *See Negligence* (Vehicles—Passenger injured while alighting from omnibus).

Private motor vehicle—

Carried for hire or reward. *See Motor insurance* (Compulsory insurance against third party risks—Passengers carried for hire or reward in private vehicle).

Railway—

Duty of care to passengers. *See Negligence* (Duty to take care—Carriage of passengers by rail).

See Negligence (Railway—Duty to passengers and invitees).

Safety—

Endangering. *See Railway* (Offence—Unlawful act endangering safety of person conveyed on railway).

Volenti non fit injuria—

Knowledge of risk. *See Negligence* (Volenti non fit injuria—Knowledge of risk—Passenger in car).

PASSENGER VESSEL

Intoxicating liquor—

Sale on board—

Permitted hours. *See Licensing* (Passenger vessel—Sale of intoxicating liquor on board—Permitted hours).

PASSING OFF

Business—

Representation that employers had gone out of business—

Employee commencing similar business on own account—Malice—Special damage. **E Worsley & Co Ltd v Cooper** [1939] 1 290, ChD.

Damages—

Right to substantial damages—

Sales to middleman. **Draper v Trist** [1939] 3 513, CA.

Foreign corporation—

Authority to sue—

Want of authority. *See Solicitor* (Payment of costs by solicitor personally—Want of authority to institute action).

Geographical name—

False trade description—

Admixture of single malt whisky and cane spirit sold as Scotch whisky—Whether plaintiffs producers of Scotch whisky—Supply by defendant in England of means to produce and retail admixture as Scotch whisky in Ecuador—Whether defendant committed tort of passing-off. **John Walker & Sons Ltd v Henry Ost & Co Ltd** [1970] 2 106, ChD.

Geographical name descriptive of particular district of France—

Plaintiffs a class of producers within that district—Champagne—Wine produced in Spain offered for sale in England under the description 'Spanish Champagne'—Whether calculated to deceive. **J Bollinger v Costa Brava Wine Co Ltd (No 2)** [1961] 1 561, ChD.

Geographical name descriptive of particular region of France—

Unfair competition—'Spanish Champagne' used to describe wine produced in Spain—Whether action lay to restrain such unfair competition. **J Bollinger v Costa Brava Wine Co Ltd** [1959] 3 800, ChD.

Get-up of goods—

Common field of activity—

Similarity to well known name in broadcasting—'Uncle Mac' of 'Children's Hour' broadcasting programme—'Uncle Mac's Puffed Wheat'—No common field of activity. **McCulloch v Lewis A May (Produce Distributors) Ltd** [1947] 2 845, ChD.

Confusion—

Foreign market—Emphasis in respondent's labels on essential part of appellant's trade mark borne on labels of his goods—Labels not causing actual confusion, but calculated to enable respondent's goods to be passed off to customers as appellant's goods—Customer illiterate persons, who ordered goods by reference to a prominent feature on the label—No infringement of appellant's registered trade mark, but relief granted on the ground of passing off. **Lee Kar Choo (trading as Yeen Thye Co) v Lee Lian Choon (trading as Chuan Lee Co)** [1966] 3 1000, PC.

Foreign market—Importance of get-up where goods retailed to non-English speaking customers by description—Sweets wrapped in red wrappers sold in Singapore loose from unlabelled glass jars—Different names of appellants' and respondents' sweets printed on wrappers, but many customers unable to read English names. **White Hudson & Co Ltd v Asian Organisation Ltd** [1965] 1 1040, PC.

Injunction—

Form of order. *See Injunction* (Form of order—Passing-off).

PASSING OFF (cont)

Journal—

Alteration of copies without authority—

Insertion of advertising matter in illustrated newspapers by means of supplement—
Representation that supplement part of advertisements of newspaper—Misrepresentation
for trading purposes. **Illustrated Newspapers Ltd v Publicity Services (London) Ltd**
[1938] 1 321, ChD.

Magazine—

Title to magazine—

Amalgamation with and incorporation in another magazine—Magazine 'Today' published by
plaintiffs from 1945 to 1953—Incorporation then with another magazine of plaintiffs—
'Today' not included in title of other magazine but statement of incorporation on inside
page—No intention to abandon right to title—Whether proprietary right protected by law
had been lost through discontinuance of user. **Norman Kark Publications Ltd v Odhams**
Press Ltd [1962] 1 636, ChD.

Name of maker—

Bona fide use by defendant of own name—

Confusion of defendants' goods with plaintiffs'—Whether defendant's use of own name
constituting passing off. **Baume & Co Ltd v A H Moore Ltd** [1958] 2 113, CA.

Newspaper. *See* Journal, *ante*.

Professional description—

Boxing title—

Confusion with defendant—Plaintiff newcomer to England—Whether reputation to protect—
Whether likelihood of confusion with defendant. **Serville v Constance** [1954] 1 662,
ChD.

Fanciful name—

Musician arranging music and conducting band under fanciful name—Name invented by
producer, plaintiff's employer, but associated exclusively with plaintiff. **Hines v Winnick**
[1947] 2 517, ChD.

Trade name—

Discontinuance of user—

Name of business—Closure of business—Goodwill—Retention of goodwill after closure—
Goodwill attached to name of business—Action to protect name maintainable after closure
so long as goodwill retained—Whether goodwill retained question of fact. **Ad-Lib Club Ltd**
v Granville [1971] 2 300, ChD.

Game—

Plaintiffs manufacturing chess sets of particular design with which name Staunton
associated—Defendant selling chess-sets described as 'Genuine Staunton chessmen'—
Made to Staunton design but not manufactured by plaintiffs—'Genuine'—Whether
calculated to deceive. **John Jaques & Son Ltd v Chess (a firm)** [1940] 2 285, CA.

Service or process—

Knowingly purporting to give named process using other than branded articles—
Misrepresentation analogous to passing off. **Sales Affiliates Ltd v Le Jean Ltd** [1947] 1
287, ChD.

Name descriptive of business—Fraud expressly negatived—Right to injunction—Office
Cleaning Services—Office Cleaning Association. **Office Cleaning Services Ltd v**
Westminster Window and General Cleaners Ltd [1946] 1 320, HL.

Voice—

Simulation of voice—

Remedy—Alleged simulation of actor's voice in broadcast of advertising commentaries—
Action for libel and for passing off—Interlocutory injunction not appropriate on the ground
of libel—Whether interlocutory injunction would be granted on the ground of passing off.
Sim v H J Heinz Co Ltd [1959] 1 547, CA.

PASSPORT

Alien—

Allegiance to Crown—

Treason. *See* **Criminal law** (Treason—Allegiance to Crown—Alien—Holder of British
passport).

United Kingdom passport—

Meaning in Commonwealth Immigrants Act 1962. *See* **Commonwealth immigrant**
(Commonwealth citizen other than person holding United Kingdom passport—United Kingdom
passport).

PASTURE

Rights of pasture—

Sale of land. *See* **Sale of land** (Conveyance—Construction—Rights of pasture).

Sheep rights. *See* **Profit à prendre** (Sheep rights—Prescription).

PATENT

Action—

Costs—

Taxation. *See* **Costs** (Taxation—Patent action).

Amendment of specification. *See* **Specification**—Amendment of specification with leave of the court,
post.

Appeal to Court of Appeal—

Application for leave to appeal—

Time for application—Extension of time for service of notice of appeal—RSC Ord 59, r 18—
Patents Act 1949, s 87(1)(c). **Practice Direction** [1969] 2 544.

Time for application—Time for service of notice of appeal if leave granted by tribunal—Ex
parte application to Court of Appeal if leave refused—Patents Act 1949, s 87(1)(a)(c)—
RSC Ord 59, rr 14, 18. **Practice Direction** [1973] 1 976.

Appeal to House of Lords—

Appeal from High Court. *See* **House of Lords** (Appeal from High Court—Patent appeal).

PATENT (cont)

Appeal tribunal—

Certiorari to quash decision of tribunal—

Circumstances in which certiorari will lie—*Patents Act 1949, s 85(1). R v Patents Appeal Tribunal, ex parte Champion Paper and Fibre Co* [1957] 1 227, QBD.

Certorari to quash decision of tribunal—

Circumstances in which certiorari will lie. *Baldwin & Francis Ltd v Patents Appeal Tribunal* [1959] 2 433, HL. *R v Patents Appeal Tribunal, ex parte J R Geigy Société Anonyme* [1963] 1 850, QBD.

Practice—

Dates of sitting. *Practice Direction* [1961] 2 512, PAT.

Public hearing—

Jurisdiction to direct hearing or judgment to be in public. *Practice Direction* [1958] 3 720, PAT.

Application—

Examination of application—

Function of Comptroller-General and of Patents Appeal Tribunal—*Patents Act 1949, s 6. R v Patents Appeal Tribunal, ex parte Swift & Co* [1962] 1 610, QBD.

Extension of term. *See* Extension of term—Application, *post*.

Refusal—

Process for treatment of human beings—Method of contraception—Process for treatment of human beings to cure or prevent disease only excluded from patent protection—Whether claim to method of contraception allowable. *Re Schering Aktiengesellschaft's Application* [1971] 3 177, PAT.

Canada. *See* Canada (Patent).

Certificate of contested validity—

Action for infringement—

Counterclaim for revocation—Order for affidavit of documents—Failure to comply with order—Defence and counterclaim struck out—Trial of action—Certificate of validity—Certificate that particulars of breaches were reasonable—Whether action 'proceeded to trial'—*Patents and Designs Acts 1907–1938, s 35—RSC Ord 31, r 21, Ord 53A, r 20. Superma Ltd v Tenconi* [1939] 2 427, ChD.

Certiorari—

Patent appeal tribunal. *See* Appeal tribunal—Certiorari to quash decision of tribunal, *ante*.

Compulsory licence. *See* Licence—Compulsory licence, *post*.

Condition—

Licence. *See* Licence—Condition, *post*.

Condition restricting sale price of patented article—

Licence—

Retailer obtaining supplies of patented article from licensee—Sale by retailer at less than fixed price—Knowledge of condition as to price—Infringement of patent by retailer. *Dunlop Rubber Co Ltd v Longlife Battery Depot (a firm)* [1958] 3 197, ChD.

Sale in violation of condition—

Time when knowledge of condition essential—Certificate of validity—Practice as to grant of certificate of validity. *Gillette Industries Ltd v Bernstein* [1941] 3 248, CA.

Convention for Protection of Industrial Property. *See* Licence—Compulsory licence—Medicine, *post*.Covenant by licensee. *See* Licence—Covenant by licensee to communicate improvements, *post*.

Crown use—

Importation—

Drug made abroad and imported by British firm—Drug supplied to Ministry of Health—Use in National Health Service hospitals—Use for the services of the Crown—Minister's power to authorise transaction—*Patents Act 1949, s 46(1). Pfizer Corp v Ministry of Health* [1965] 1 450, HL.

Patent for whole article, not for component part—

Application to unpatented article of statute—*Patents and Designs Act 1907, s 29(1)(A)* (as amended to 1946) and *Defence (Patents, Trade Marks etc) Regulations 1941* (SR & O 1941 No 1780), reg 3(5). *American Flange and Manufacturing Co Inc v Van Leer* [1948] 2 698, KBD.

Rights of third parties in respect of Crown use—

Contract—Covenant by patentees not to sell fuel economisers except exclusively through agents—Patentees becoming contractors to Government department—Written authority to use patents for service of Crown—Whether authority rendered ineffective contractual obligation with third parties—'Agents, contractors, or others'—*Patents and Designs Acts 1907–1942, s 29—RSC Ord 53A, r 22. Foster Wheeler Ltd v E Green & Son Ltd* [1946] 1 63, CA.

Damages. *See* Infringement—Damages, *post*.Delivery up. *See* Infringement—Order for delivery up, *post*.

Employee's invention—

Payment to employee—

Patents registered in name of employer and employee—Understanding as to payment to employee but no agreement—Apportionment of benefits of inventions—*Patents Act 1949, s 56(2). Sterling Engineering Co Ltd v Patchett* [1955] 1 369, HL.

Right of employer to benefit of invention—

Invention by technical adviser in charge of design and development—Not specifically called on for advice as to design—Invention relating to employer's business—Duty of employee. *British Syphon Co Ltd v Homewood* [1956] 2 897, ChD.

PATENT (cont)

Extension of term—

Application—

Advertisement—Amendment of application—Natural justice—Period of extension—Application specifying period of extension sought—Application amended after expiry of original term—Amendment specifying greatly increased period of extension—No advertisement of amended application—Comptroller granting application for period slightly in excess of period originally sought—No opportunity for persons wishing to oppose extended period to do so—Whether amended application a fresh application made out of time—Whether comptroller acting ultra vires or contrary to the principles of natural justice—*Patents Act 1949, s 24(1)(3)*—*Patent Rules 1968 (S I 1968 No 1389) rr 70(2), 71, 152. R v Comptroller-General of Patents, ex parte Farmacy Supplies Ltd [1971] 2 419, QBD.*

Advertisement—Form—*RSC Ord 53A, r 4(d). Practice Direction [1963] 2 1048, ChD.*

Discontinuance—Procedure. *Practice Direction [1975] 1 992, ChD.*

Procedure—Fixing appointed day—*Patents Act 1949, ss 24, 25—RSC Ord 53A, r 4(c)(d). Practice Direction [1961] 2 625, ChD.*

Extension on ground of loss due to hostilities between His Majesty and any foreign state—

Matters to be considered—Applicant prohibited by foreign law from giving necessary information—Patented article manufactured abroad—Corresponding foreign patent already expired—*Patents and Designs Acts 1907—1942, s 18(6). Re Von Kantzow's Patent [1944] 1 630, ChD.*

Matters to be considered—Whether sales to Government to be taken into consideration. *Re van Berkel's Patents [1944] 1 545, ChD.*

No order to be made on application of person who subject of such foreign state—Deprivation of nationality by decree of enemy state—*Patents and Designs Acts 1907—1946, s 18(6). Lowenthal v Attorney-General [1948] 1 295, ChD.*

Patents acquired from German company—English company paying under agreement one-quarter of moneys received under patents to German company—German company majority shareholders in English company—Loss or damage suffered due to hostilities—Whether English company carried on wholly or mainly for benefit of German company—Custodian of enemy property—Vesting order—Shares sold by Custodian to directors of English company—*Patents and Designs Act 1907—1942, s 18(6). Re Ring Springs Ltd's Patents [1944] 2 421, ChD.*

Recognition—North Korea not recognised—Whether a 'state'—*Patents Act 1949, s 24(1). Re Al-Fin Corp'n's Patent [1969] 3 396, ChD.*

Foreign judgment—

Recognition—

Foreign judgment affecting rights of English company in regard to English patents—English company neither subject to jurisdiction of foreign court nor party to foreign proceedings. *British Nylon Spinners Ltd v Imperial Chemical Industries Ltd [1952] 2 780, CA.*

Grant—

Opposition—

Prior use—Invention used in United Kingdom before priority date of claim—Used—Use without appreciating qualities of product or principles on which based—Product blended with other substances to make it commercially saleable—Identity of product lost in blended article—Manufacture and sale of blended product in commercial quantities—Ampicillin trihydrate—Ampicillin trihydrate blended with other substances to make it commercially saleable in form of capsules—Special qualities of ampicillin trihydrate unknown to manufacturers—Whether manufacturers 'used' ampicillin trihydrate—*Patents Act 1949, s 14(1)(d). R v Patents Appeal Tribunal, ex parte Beecham Group Ltd [1974] 1 333, HL.*

Prior use—Secret use—No account to be taken of any secret use—Meaning of 'secret'—Intention to conceal use—Nature of product not discoverable by public—Product blended with other substances to make it commercially saleable—Manufacturers unaware of qualities of product—Sale of blended product in commercial quantities—Nature of product not discoverable in existing state of scientific knowledge after blending—Manufacturers having no intention to conceal product—Whether manufacture and sale of product a 'secret use'—*Patents Act 1949, s 14(3). Bristol-Myers Co Ltd v Beecham Group Ltd [1974] 1 333, HL.*

Infringement—

Damages—

Effect of amendment of specification on recovery of damages—Original claim framed in good faith and with reasonable skill and knowledge—Patent invalid at time infringed—Patent as amended valid—Jurisdiction to award damages in respect of infringements—*Patents and Designs Acts 1907—1932, s 23. Molins and Molins Machine Co Ltd v Industrial Machinery Co Ltd [1937] 4 295, CA.*

Interest—Discretion to include interest on whole or part of the debt—Damages in respect of infringing use over period of years—Infringing use starting before grant of patent but after publication of complete specification—Exercise of discretion—Evidence of commercial practice—Evidence that royalties in respect of use not expected to be paid until grant—No evidence that interest expected or paid for period prior to grant—Discretion to limit interest so as to run from date of grant—*Law Reform (Miscellaneous Provisions) Act 1934, s 3(1)—Patents Act 1949, s 13(4). General Tire and Rubber Co v Firestone Tyre and Rubber Co Ltd [1975] 2 173, HL.*

Measure of damages—Basis of assessment—Amount payable by way of royalties under licence for use—Evidence of amount of royalties defendant would have had to pay—Licensing agreements entered into by plaintiff with other users—Damages to be assessed on basis of what defendant would in fact have had to pay rather than on sum defendant ought to have paid. *General Tire and Rubber Co v Firestone Tyre and Rubber Co Ltd [1975] 2 173, HL.*

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Infringement (cont)—

Order for delivery up—

Infringement by particular user only. **Electric and Musical Industries Ltd and Boonton Research Corp v Lissen Ltd** [1936] 3 234, ChD.

Validity of patent—

Ambiguity—Construction of claim—'Substantially as hereinbefore described'—Claim of principal—Widening words. **R W Crabtree & Sons Ltd v R Hoe & Co Ltd** [1936] 2 1639, CA.

Novelty—Novelty dependent on anterior discovery—Ambiguity and obscurity in specification—Indication of inventive step—Width of claim—Limitation of claim by reference to plan. **Raleigh Cycle Co Ltd v H Miller & Co Ltd** [1948] 1 308, HL.

Novelty—Patentable subject-matter—Prior publication—Prior grant—Patents and Designs Act 1907, s 25(2). **Mullard Radio Valve Co Ltd v Philco Radio and Television Corp of Great Britain Ltd** [1936] 2 920, HL.

Invention—

Breach of confidence—

Invention unpatented. *See* **Equity Breach of confidence—Damages—Use of information obtained in confidence—Springboard for activities detrimental to informant—Unpatented device disclosed by inventor in course of negotiations for marketing his patented device**.

Manner of manufacture—

Agricultural process—Method of tenderising meat by injection of enzyme before slaughter—Statute of Monopolies (1623), s 6—Patents Act 1949, s 101(1). **R v Patents Appeal Tribunal, ex parte Swift & Co** [1962] 1 610, QBD.

Publication—

Meaning of publication—Patents Act 1949, s 101(1). **R v Patent Appeal Tribunal, ex parte Løvens Kemiske Fabriks Handelsaktieselskab** [1968] 3 536, QBD.

Law—

Development—

Homogeneous development in all countries with like system. **R v Patents Appeal Tribunal, ex parte Swift & Co** [1962] 1 610, QBD.

Leave to amend specification. *See* **Specification—Amendment of specification with leave of the court, post**.

Licence—

Compulsory licence—

Medicine—Application for compulsory licence within three years from grant—Effect of International Convention for Protection of Industrial Property 1934 (1938, Cmd 5833) art 5(A)(4)—Patents Act 1949, ss 41(1)(b), 45(3). **Parke, Davis & Co v Comptroller-General of Patents, Designs and Trade Marks** [1954] 1 671, HL.

Medicine—Date from which licence effective—Licence not able to be granted with retroactive effect and thus not to be back-dated—Interlocutory injunction granted to restrain infringement pending grant of compulsory licence—Patents Act 1949, s 41(1). **F Hoffman-La Roche & Co AG v Inter-Continental Pharmaceuticals Ltd, J R Geigy SA v Inter-Continental Pharmaceuticals Ltd** [1965] 2 15, CA.

Condition—

Validity—Condition in licence that compensation payable to licensors if quantity of contract material sold or used by licensees exceeds certain quota in any month—Whether condition void—Patents and Designs Act 1907, s 38(1). **Tool Metal Manufacturing Co Ltd v Tungsten Electric Co Ltd** [1955] 2 657, HL.

Covenant by licensee to communicate improvements—

Assignment of patent—Enforcement of covenant. **National Carbonising Co Ltd v British Coal Distillation Ltd** [1936] 2 1012, CA.

Royalties—

Information for ascertaining royalties—Licensors' auditors to be given 'all such other information as may be necessary or appropriate to enable the amount of the royalties payable' to be ascertained—Whether auditors entitled to information related to articles which were similar to patented articles but which licensees stated were not patented. **Fomento (Sterling Area) Ltd v Selsdon Fountain Pen Co Ltd** [1958] 1 11, HL.

Payment—Licensees, sub-contractors to Government department—Written authority to use patents for service of Crown—Whether royalties payable under licence—Minimum royalty clause—patents and Designs Acts 1907–1939, s 29. **No-nail Cases Proprietary Ltd v No-nail Boxes Ltd** [1946] 1 523, HL.

Payment—Most favoured licensee clause—Condition in licence that if sub-licence granted at lower royalties such royalties should be substituted for those in the licence—Royalty structure in sub-licence different from that in licence—Whether royalties payable under sub-licence substituted for those payable under licence. **Fomento (Sterling Area) Ltd v Selsdon Fountain Pen Co Ltd** [1958] 1 11, HL.

Specific performance of agreement to grant—

Judgment of American court affecting rights of English company in regard to English patents—Conflict of law. **British Nylon Spinners Ltd v Imperial Chemical Industries Ltd** [1954] 3 88, ChD.

Licensing agreement—

Inspection of account. *See* **Account** (Inspection—Scope of obligation—Licence agreement—Agreement in relation to patents and trade marks).

Medicine—

Compulsory licence. *See* **Licence—Compulsory licence—Medicine, ante**.

Opposition to grant of patent. *See* **Grant—Opposition, ante**.

Petition for revocation—

Appeal from order for revocation—

Appeal from High Court to House of Lords—Procedure. *See* **House of Lords** (Appeal from High Court—Patent appeal—Appeal from order for revocation of patent—Procedure).

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Petition for revocation (cont)—

Application to comptroller—

Matters which may not be considered by the comptroller—Want of utility, prior user, want of subject-matter—Application to amend specification—Restrictions on amendments under s 11—Patents and Designs Acts 1907—1932, ss 11, 21, 25, 26. **Re Johnson & Johnson (Great Britain) Ltd's Patent** [1937] 4 561, CA.

Insufficiency—

Fair basis—Patent for antibiotic and process of manufacture—Micro-organism described in specification—Micro-organism deposited in collection—Whether patentee must make essential starting material available to public—Patents Act 1949, s 32(1). **American Cyanamid Co v Upjohn Co** [1970] 3 785, HL.

Particulars of prior use—

Earliest and latest dates—RSC Ord 53A, r 16. **Re Martin's Patents** [1936] 1 711, ChD.

Practice—

Motions—

Motions to be made to patents judge—Patents Act 1949—RSC Ord 53A. **Practice Direction** [1960] 3 593, ChD.

Proceedings for infringement or revocation of patent—

Order for inspection of machinery—Application for leave to inspect allegedly infringing machines—No prima facie case for inspection—Power of court to order inspection in special circumstances—Application for particulars of defendants' contentions—Agreement between the parties that no written statements of contentions should be made—Whether court should order particulars—RSC Ord 53A, r 21A(2). **American Chain and Cable Co Inc v Hall's Barton Ropery Co Ltd** [1938] 4 129, ChD.

Statements of contentions of parties—Interlocutory application—Tests and experiments—Experiments to be limited to issues of infringement and validity—Statements of contentions of parties—Form of such statements—RSC Ord 53A, r 21A(2)(b)(d). **British Thomson-Houston Co Ltd v Tungstalite Ltd** [1938] 4 177, ChD.

Summons for directions—Action for infringement—Counterclaim for revocation—Statements signed by counsel—What particulars may be ordered—RSC Ord 53A, r 21A(2). **Whatmough v Morris Motors Ltd** [1938] 4 584, ChD.

Summons for directions—Procedure where parties agreed as to form of order—Procedure where parties not agreed on terms of order—Procedure for obtaining other interlocutory relief—RSC Ord 103, r 26. **Practice Direction** [1974] 1 40, ChD.

Reference to High Court—

Comptroller a party—Costs. **Re Al-Fin Corp'n's Patent** [1969] 3 396, ChD.

Summons suitable for hearing by judge—

Issue of summons—Stamp—Adjournment into court—Setting down for hearing. **Practice Direction** [1970] 1 17, ChD.

Practice and procedure—

Appeal from High Court to House of Lords. *See* **House of Lords** (Appeal from High Court—Patent appeal).

Price of patented article—

Condition restricting price. *See* Condition restricting price of patented article, *post*.

Public hearing of appeal tribunal. *See* Appeal tribunal—Public hearing, *ante*.

Rectification of register—

Vesting order—

Enemy alien bare trustee for British company—Interference with comptroller's emergency powers—Trading with the Enemy Act 1939, s 4—Patents, Designs, Copyright and Trade Marks (Emergency) Act 1939, s 2. **Re I G Farbenindustrie Aktiengesellschaft and Bayer Products Ltd** [1940] 4 486, ChD.

Refusal of application. *See* Application—Refusal, *ante*.

Restriction of sale price of patented article. *See* Condition restricting sale price of patented article, *ante*.

Revocation. *See* Petition for revocation, *ante*.

Royalties. *See* Licence—Royalties, *ante*.

Specific performance of agreement to grant licence.

See **S Licence—Specific performance of agreement to grant**, *ante*.

Specification—

Amendment of specification by way of disclaimer—

By way of disclaimer—Whether amendment claims or describes matter not in substance disclosed in unamended specification—Amendment adding further integer to combination constituting invention—Additional integer disclosed in unamended specification but not shown therein as a distinctive part of the invention or as an inventive step—Patents Act 1949, s 31(1). **Amp Incorporated v Hallerman Ltd** [1962] 1 673, HL.

Amendment of specification with leave of the court—

Application for leave—Advertisement of intention to apply for leave—Identification of pending proceedings—Patents Act 1949, s 30—RSC Ord 53A, r 19(a). **Practice Direction** [1957] 3 697, ChD.

Application for leave—Advertisement of intention to apply for leave—Title of invention to be included—RSC Ord 95, r 19(a). **Practice Direction** [1965] 2 799.

Construction—

Disconformity—Legitimate development—Patents and Designs Acts 1907—1932, ss 25(2), 91. **Electric and Musical Industries Ltd v Lissen Ltd** [1938] 4 221, HL.

Threats of infringement proceedings—

Remedy for groundless threats of infringement proceedings—

Action by person aggrieved—Whether threats action lies where genuine intention to enforce patent—Whether interlocutory injunction against threats granted—Patents Act 1949, s 65. **HVE (Electric) Ltd v Cufflin Holdings Ltd** [1964] 1 674, CA.

Threats—

What constitutes a threat—Patents and Designs Acts 1907—1932, s 36. **Surrridge's Patents Ltd v Trico-Folberth Ltd** [1936] 3 26, ChD.

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Appeal from. *See* Patent (Appeal to Court of Appeal).

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Appeal—

Leave to appeal out of time—

Divorce—Decree granted in favour of husband—Child held to be child of family—Appeal by husband on issue of paternity—Six years delay—Refusal of leave—Reasons for refusal—Failure to show due diligence—Changes in law relating to burden of proof of illegitimacy working to disadvantage of child. **McC (R D) v McC (J A)** [1971] 2 1097, CA.

Blood test—**Application—**

Jurisdiction of registrar to entertain application—Circumstances in which summons should be adjourned to judge—Summons opposed or matter of principle likely to arise—Family Law Reform Act 1969, s 20(1). **R v R (blood test: jurisdiction)** [1973] 3 933, FamD.

Divorce—

Adultery—Evidence—Blood groups. **H v H (H, by his guardian, intervening)** [1966] 1 356, Div.

Adultery—Evidence—Legitimacy of child in issue—Standard of proof. **F v F** [1968] 1 242, Div.

Criterion whether test should be ordered—Interest of child—Application for purpose of claiming custody. **B v B and E (B intervening)** [1969] 3 1106, CA.

Criterion whether test should be ordered—Interest of child—Whether interest of child paramount. **S v S** [1970] 3 107, HL.

Criterion whether test should be ordered—Interest of child—Interest of justice. **S v McC (formerly S) and M (S intervening)** [1970] 1 1162, CA.

Criterion whether test should be ordered—Interest of child—Inconclusiveness of result. **B v B and E (B intervening)** [1969] 3 1106, CA. **W v W** [1970] 1 1157, CA.

Criterion whether test should be ordered—Interest of child—Inconclusiveness of result—Allegation of adultery—Child ten years old—Purpose of test provision of evidence of adultery. **M (D) v M (S) and G (M (D A) intervening)** [1969] 2 243, CA.

Guardian ad litem—Consent—Whether consent of guardian ad litem necessary—Matrimonial Causes Act 1965, ss 33, 34. **Re L** [1968] 1 20, CA.

Guardian ad litem—Official Solicitor—Appointment of Official Solicitor as guardian ad litem where blood test likely to be directed—Appointment usually unnecessary in first instance—Circumstances in which appointment should be made. **Practice Direction** [1975] 1 223, FamD.

Guardian ad litem—Official Solicitor—Appointment of Official Solicitor—Notice to Official Solicitor of intention to cause child to undergo medical examination—Matrimonial Causes Rules 1968 (S 1 1968 No 219), r 108. **Practice Direction** [1968] 3 607, Div.

Jurisdiction to order test—County court. **B R B v J B** [1968] 2 1023, CA.

Jurisdiction to order test—High Court—Divorce Division. **Re L** [1967] 2 1110, Div.

Jurisdiction to order test—High Court—Advantage to child essential. **H v H** [1966] 3 560, Div.

Refusal of test—Presumption of legitimacy—Whether refusal reasonable. **B v B and E (B intervening)** [1969] 3 1106, CA.

Nullity—

Pregnancy at date of marriage—Pregnancy by person other than petitioner—Haptoglobin tests. **Stocker (by his next friend) v Stocker (otherwise Woodruff, by her guardian)** [1966] 2 147, Div.

Onus of proof—

Presumption of legitimacy—Blood test not conclusive—Inference to be drawn—Test showing that husband could be father of child—Evidence that child had blood group compatible with paternity of one man in nine or ten of western Europeans—Family Law Reform Act 1969, s 26. **T (H) v T (E)** [1971] 1 590, Div.

Procedure—

Direction for use of blood tests—Arrangements for taking and testing of samples. **Practice Direction** [1972] 1 640, FamD.

Declaration of legitimacy. *See* Legitimation (Declaration of legitimacy).

Estoppel—**Divorce—**

Order for custody of child—Child subsequently petitioning for declaration of legitimacy—Husband in divorce suit denying paternity—Order for custody not a judgment in rem. **B v Attorney-General (N E B intervening)** [1965] 1 62, Div.

Order for maintenance of child—Application to vary order on ground that child not child of marriage—Registrar not competent to determine issue of paternity—Matrimonial Causes Act 1950, s 26(1)—Matrimonial Causes Rules 1950 (S 1 1950 No 1940), rr 27, 29(1). **Nokes v Nokes** [1957] 2 535, CA.

Undefended proceedings—Custody order—Custody awarded to mother—Application for maintenance—Application opposed by father—Whether father estopped from denying paternity by reason of custody order. **G (S D) v G (H H)** [1970] 3 844, Div.

Evidence—**Admissibility—**

Photographic evidence—Evidence of facial resemblance between child and near relations—Whether photographic evidence admissible. **C v C and C (legitimacy: photographic evidence)** [1972] 3 577, FamD.

Leave to appeal out of time. *See* Appeal—Leave to appeal out of time, *ante*.

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Presumption of legitimacy—

Onus of proof—

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Negligence—

Proximity of vehicle to edge of pavement. *See* Negligence (Highway—Pavement—Proximity of vehicle to edge of payment).

Unguarded opening—

Negligence. *See* Negligence (Highway—Unguarded opening on pavement).**PAY AS YOU EARN***See* Income tax (Pay as you earn system).**PAYMENT**

Additional work—

Building contract. *See* Building contract (Contractor—Right to payment for additional work).

Bank—

Transfer order—

Time of payment. *See* Bank (Payment—Time of payment—Transfer order).Bankrupt and assignee. *See* Bankruptcy (Payment to bankrupt and assignee).F o b contract. *See* Sale of goods (Payment—Confirmed letter of credit—F o b contract).Fire brigade services. *See* Fire Brigade (Payment for services).Guarantee. *See* Guarantee (Payment order).

Preferential—

Winding-up of company. *See* Company (Winding-up—Preferential payments).Rent. *See* Landlord and tenant (Rent—Payment).Sale of goods. *See* Sale of goods (Payment).

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Bank payment order. *See* Bank (Payment—Time of payment—Payment order).**PAYMENT INTO COURT**Application for specific performance. *See* Specific performance (Sale of land—Purchaser in possession).

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Generally. *See* Costs (Payment into court).Practice. *See* Practice (Payment into court—Costs).

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Effect on costs. *See* County Court (Costs—Payment into court).

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Personal injury—

Interest. *See* Interest (Damages—Personal injury—Payment into court).

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Costs. *See* Legal aid (Costs—Payment into court).

Non-disclosure—

Appeal as to quantum of damages. *See* Court of Appeal (Practice—Payment into court—Non-disclosure—Appeal as to quantum of damages).Practice. *See* Practice (Payment into court—Non-disclosure of payment into court).**PAYMENT OUT OF COURT**Admiralty. *See* Admiralty (Practice—Payment out of court).Compensation for compulsory acquisition of land. *See* Compulsory purchase (Compensation—Payment out of compensation paid into court).County court. *See* County court (Payment out of court).Generally. *See* Practice (Payment out of court).

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Disability for voting at meeting. *See* Local authority (Meetings—Disability of members of local authorities for voting on account of pecuniary interest in contracts etc).**PECUNIARY LEGACY**Amount. *See* Will (Gift—Amount of pecuniary legacy).Estate duty. *See* Estate duty (Incidence—Pecuniary legacies).Payment before testamentary expenses. *See* Administration of estates (Order of application of assets—Pecuniary legacies to be paid before testamentary expenses).**PEDESTRIAN CROSSING***See* Road traffic (Pedestrian crossing).

PEDIATRICIAN

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Divorce proceedings. *See Evidence* (Expert witness—Pediatrician—Divorce proceedings).**PEDLAR**Definition. *See Street trading* (Pedlar—Definition).**PEER**

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Disqualification as candidate. *See Elections* (Parliamentary—Validity—Disqualification of candidate—Peer).Privilege from arrest. *See Arrest* (Privilege from arrest—Peer of the realm).**PEERAGE**

Hereditary peerage—

Peerage confirmed by letters patent—

Whether inalienable—*Re Bristol South East Parliament Election* [1961] 3 354, QBD.

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National insurance—

Arrears of contributions—

Recoverable as a penalty. *See National insurance* (Arrears of contributions—Recovery—Recoverable as a penalty).Relief against. *See Equity* (Penalty—Relief against penalty).**PENDING ACTION**

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Contempt of court. *See Contempt of court* (Publications concerning legal proceedings—Pending proceedings).**PENSION**

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Employer and employee—

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Damages under Fatal Accidents Acts—

Whether pension deductible. *See Fatal accident* (Damages—Deduction from damages—Pension).Fireman. *See Fire brigade* (Fireman—Pension).Income tax. *See Income tax* (Pension).

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Right to increase—

Pensions 'payable by local authority solely in respect of local government service'—Transfer of servant to transport board—Continuance as member of pension fund of local authority—'Enactment by which fund regulated'—London Passenger Transport Act 1933, 2 80(9), (10)—Pensions (Increase) Act 1944, Sch I, Pt II, para 1. *Abbott v London County Council* [1951] 2 697, CA.

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Damages for loss of pension rights—

Company's pension scheme—Wrongful dismissal—Discretionary pension scheme referred to in service agreement—Whether discharge or early retirement with consent. *Bold v Brough, Nicholson & Hall Ltd* [1963] 3 849, QBD.

Membership of pension fund—

Termination—

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Pension scheme—

Amendment—

Employees' pension and life assurance scheme—Provision for change of scheme reserving the right to employers to discontinue the scheme in the event of 'unforeseen circumstance'—Whether amendments changing beneficial interests validly made. *Re Alfred Herbert Ltd Pension and Life Assurance Scheme Trusts* [1960] 1 618, ChD.

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Pension scheme (cont)—

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Power of nomination—

Power to appoint nominee to receive contributions in event of employee's death before entitlement to pension—Form of appointment provided for by rules of scheme—Power to cancel nomination and appoint new nominee—Exercise of power—Employee cancelling nomination and requesting new nomination by letter to secretary of pension fund—Original nomination form amended by secretary in accordance with letter—Validity of new nomination. *Re Danish Bacon Co Ltd Staff Pension Fund* [1971] 1 486, ChD.

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Provision excluding employer's liability for injuries caused by persons in common employment with injured person—

Agreement collateral to contract of service—Validity. *Smith v British European Airways Corp* [1951] 2 737, KBD.Restraint of trade. *See* **Restraint of trade by agreement** (Pension scheme).Police. *See* **Police** (Pension).Scheme— *See* Pension scheme, *ante*.War service. *See* **War pension**

Widow—

Pension under company director's service agreement. *See* **Company** (Objects clause—Construction—Pension—Service agreement with company's general manager and controlling shareholder, who was also a director, providing for pension to be paid to his widow).**PENSIONS APPEAL TRIBUNAL**

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Civil action—

Right of injured party—

Civil action at suit of injured party—Whether action lies. *Hargreaves v Bretherton* [1958] 3 122, QBD.Civil liability. *See* **Criminal law** (Perjury—Civil action).Criminal liability. *See* **Criminal law** (Perjury).

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Whether civil cause of action. *See* **Evidence** (Witness—Perjury—No civil cause of action).**PERMIT**Amusements with prizes. *See* **Gaming** (Amusements with prizes—Permit for provision of amusements with prizes).**PERMITTED DEVELOPMENT***See* **Town and country planning** (Development).**PERMITTED HOURS***See* **Licensing**.*SeeS* **Licensing** (Permitted hours).**PERPETUITIES**Rule against perpetuities. *See* **Rule against perpetuities**.**PERSISTENT CRUELTY**Summary matrimonial jurisdiction. *See* **Husband and wife** (Summary proceedings—Persistent cruelty).**PERSON MENTALLY DISORDERED***See* **Mental health**

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Generally. *See* **Mental health**

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Material fact outside knowledge of plaintiff—Extension of time. *see* **Limitation of action** (Extension of time limit—Material fact of decisive character outside knowledge of plaintiff).

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PERSONAL REPRESENTATIVES

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Lapse—

Substituted gifts. *See* **Will** (Lapse—Substituted gifts—Legacy to personal representatives of deceased legatee).

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PERSONAL SERVICES

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Breach of contract for personal services. *See* **Injunction** (Breach of contract—Contract for personal services).

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PERSONALTY (cont)

Will—

Proceeds of sale of settled land—

Will made abroad. *See* **Will** (Will made abroad—Proceeds of sale of settled land—Whether personality).**PERVERTING COURSE OF JUSTICE***See* **Criminal law** (Obstructing course of justice).**PESTS**

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Destruction—

Notice to owner of land—Validity—Instruction to carry out 'poison treatment or other work of no less effectual character'—Prevention of Damage by Pests Act 1949, s 4(1). *Perry v Garner* [1953] 1 285, QBD.**PETITION**

Advertisement—

Petition to wind up company. *See* **Company** (Compulsory winding-up—Advertisement of petition).

Appeal—

House of Lords. *See* **House of Lords** (Leave to appeal—Petitions for leave to appeal).

Bankruptcy—

Creditor's petition—

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Evidence. *See* **Bankruptcy** (Appeal—Appeal against adjudication—Allegation that petition not served on debtor).

Company—

Compulsory winding-up—

Board of Trade's petition. *See* **Company** (Compulsory winding-up—Petition by Board of Trade).Contributory's petition. *See* **Company** (Compulsory winding-up—Petition by contributory).Creditor's petition. *See* **Company** (Compulsory winding-up—Petition by creditor).Official Receiver's petition. *See* **Company** (Compulsory winding-up—Petition by official Receiver).Secretary of State's petition. *See* **Company** (Winding-up—Compulsory winding-up—Petition by Secretary of State).

Oppression of minority—

Petition for order under Companies Act 1948, s 210. *See* **Company** (Oppression—Petition).Petition for order confirming reduction of share capital. *See* **Company** (Reduction of capital—Petition).Restoration of name to register. *See* **Company** (Restoration to register—Application).

Costs—

Winding-up—

Dismissed petition. *See* **Company** (Compulsory winding-up—Costs—Dismissed petition).Divorce. *See* **Divorce** (Petition).Faculty. *See* **Ecclesiastical Law** (Faculty—Petition).

Judicial separation—

Form of petition. *See* **Husband and wife** (Judicial separation—Form of petition).Leave to appeal to House of Lords. *See* **House of Lords** (Leave to appeal—Petition for leave to appeal).

Legitimation—

Power of court to order hearing in camera. *See* **Legitimation** (Practice—Hearing of petition in camera).Nullity. *See* **Nullity** (Petition).

Patent—

Revocation of patent. *See* **Patent** (Petition for revocation).

Service—

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Bankruptcy petition. *See* **Bankruptcy** (Petition—Service—Service out of jurisdiction).Winding-up of company. *See* **Company** (Compulsory winding-up).**PETITION OF RIGHT**

Colonial government—

Mauritius. *See* **Mauritius** (Public authorities—Colonial government).

Colonial stock—

Claim by stockholder for interest on stock—

Judgment or order—Compliance with order—Duty of registrar of colonial government to comply with order—Failure to comply—Examination of registrar as judgment debtor—Jurisdiction of court to order examination of registrar—Whether order made on petition order against Crown or against registrar—Whether registrar a judgment debtor—Whether order an order for the payment of money—Colonial Stock Act 1877, s 20—RSC Ord 48, r 1(1), Ord 77, rr 1, 15(1). *Franklin v The Queen* [1973] 3 861, CA.

PETITION OF RIGHT (cont)

Colonial stock (cont)—

Claim by stockholder for interest on stock (cont)—

Remedy—Procedure—Plaintiff claiming to be interested in Government of Southern Rhodesia stock—Bank of England paying agents and registrars of stock—Government of Southern Rhodesia failing to provide bank with funds to pay interest—Whether plaintiff limited to civil proceedings against bank in respect of funds held by them as registrars—Whether plaintiff entitled to present petition of right—Form of petition—Colonial Stock Act 1877, s 20—Crown Proceedings Act 1947, ss 39, 40, Sch 2—Cyprus Act 1960, s 3, Sch para 9. **Franklin v Attorney-General** [1973] 1 879, QBD.

Suppliant holding stock jointly with others—Other stockholders not joined in petition—Whether suppliant entitled to petition on his own. **Barclays Bank Ltd v The Queen** [1974] 1 305, QBD.

Right of any person claiming to be interested in stock to present petition of right—

Beneficial interest—Claim by stockholder to interest on stock—Suppliant not at date of petition registered holder of stock—Suppliant having beneficial interest in stock—Suppliant registered holder by date of judgment—Whether essential for success of petition that suppliant be registered holder at date of petition—Colonial Stock Act 1877, s 20. **Barclays Bank Ltd v The Queen** [1974] 1 305, QBD.

Salvage—

Crown acting as salvor—

Claim against Crown as salvor—Whether petition of right lies against Crown when acting as salvor—Merchant Shipping (Salvage) Act 1940, s 1(1). **Anglo-Saxon Petroleum Co Ltd v Damant** [1947] 2 465, CA.

Stockholder—

Stock transferred by statutory authority to Crown—

Action for rectification of register—Need to apply for relief by way of petition of right. **Lovibond v Grand Trunk Ry Co of Canada** [1936] 2 495, PC.

PETROL

Filling station—

Agreement in restraint of trade. *See* **Restraint of trade by agreement** (Petrol filling station).

Change of use for planning purposes. *See* **Town and country planning** (Development—Material change of use—Petrol filling station).

London—

Consent to establishment to station adjacent to street. *See* **London** (Petrol-filling station—Consent of county council to establishment of station adjacent to street).

Solus agreement—

Implied term—Retail price maintenance. *See* **Contract** (Implied term—Retail price maintenance—Petrol filling station—Solus agreement).

Garage—

Sunday closing. *See* **Shop** (Sunday closing—Garage—Lawful opening for sale of petrol, oil and motor accessories).

Offence—

Having commercial petrol in tank of private car—

Prima facie evidence—Analysis—Result possibly produced by derivatives of diphenylamine—Motor Spirit (Regulation) Act 1948, s 2(1). **Taylor v Ciecierski** [1950] 1 319, KBD.

Keeping petroleum spirit on premises without a licence—

Petrol sold direct from tanker into car tanks in café forecourt—Whether owner of forecourt occupier of premises on which petrol 'kept' without licence—Whether owners of tanker occupiers of 'premises', viz petrol tanker, for keeping petrol without licence—Whether owners of tanker conveying petrol—Petroleum (Consolidation) Act 1938, ss 1(1)(2), 6(2)—Petroleum-Spirit (Conveyance by Road) Regulations 1957 (SI 1957 No 191), reg 9. **Grandi v Milburn** [1966] 2 81, QBD.

Rationing. *See* **Rationing** (Petrol).

Sale to child—

Negligence—

Contributory negligence. *See* **Negligence** (Contributory negligence—Child—Explosive substance given to child—Sale of petrol to child).

Theft of petrol—Garage attendant filling tank of car with petrol—

Accused driving away without paying for petrol.
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PETROL FILLING STATION

Sales agreement—

Implied term—

Retail price maintenance. *See* **Contract** (Implied term—Retail price maintenance—Petrol filling station—Sales agreement).

PETROL STATION

London—

Consent to establishment of station adjacent to street. *See* **London** (Petrol-filling station—Consent of county council to establishment of station adjacent to street).

PETROLEUM RIGHTS

Western Australia. *See* **Western Australia**

PHARMACEUTICAL SERVICES

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Supply of medicine or drug. *See* **National health service** (Pharmaceutical services—Supply of medicine or drug).

PHARMACIST

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Sale by retail. *See* **Poison** (Sale by retail—Sale to be effected by or under supervision of registered pharmacist).**PHARMACY**

Wholesale dealer in drugs—

Prohibition on dealer having interest in business carried on in pharmacy—

New Zealand. *See* **New Zealand** (Pharmacy—Wholesale dealer in drugs—Prohibition on dealer having an interest in the business carried on in pharmacy).**PHOTOGRAPH**

Evidence—

Criminal proceedings—

Prejudice to accused. *See* **Criminal evidence** (Improper conduct of accused on other occasions—Prejudice to accused—Photograph of accused).**PHYSICIAN***See* **Medical practitioner****PICKETING**Breach of peace. *See* **Trade dispute** (Picketing—Breach of peace).

Highway—

Unreasonable use. *See* **Highway** (Public nuisance—Unreasonable use of highway—Circumstances constituting unreasonable use—Picketing).Nuisance. *See* **Trade dispute** (Picketing—Nuisance).Obstruction of highway. *See* **Trade dispute** (Picketing—Obstruction of highway)

Peaceful picketing—

Unfair industrial practice. *See* **Industrial relations** (Unfair industrial practice—Peaceful picketing).Right of peaceful picketing. *See* **Trade dispute** (Obstruction of highway—Right of peaceful picketing).

Watching and besetting premises—

Whether actionable nuisance. *See* **Nuisance** (Watching and besetting premises).**PICTURES**

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Exception. *See* **Estate duty** (Exemption—Pictures and objects of artistic interest).**PIGEON**

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Right of landowner to kill. *See* **Animal** (Pigeon—Spoiling crops—Right to kill).**PIGS**Lien. *See* **Lien** (Maintenance of animals—Pigs).**PILOT**

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Private pilot's licence. *See* **Carriage by air** (Private pilot's licence).**PILOTAGE DISTRICT***See* **Harbour** (Pilotage district).**PIPES**

Title to—

Pipes laid in servient land pursuant to easement. *See* **Easement** (Pipes—Right to lay and maintain pipes on servient land).**PLACE OF SAFETY ORDER**Children and young persons. *See* **Children and young persons** (Detention—Place of safety order).**PLACE OF TRIAL**Criminal trial. *See* **Criminal law** (Trial—Place of trial).**PLACE OF WORK**

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Building. *See* **Building** (Working places).**PLAN**

Building lease—

Consent of lessor to plans. *See* **Landlord and tenant** (Building lease—Consent of lessor to plans).Description of registered land. *See* **Land registration** (Description of registered land—Boundary—

Filed plan).

PLANNING PERMISSIONDevelopment. *See* **Town and country planning** (Permission for development).

Sale of Land—

Condition. *See* **Sale of land** (Condition—Planning permission to be obtained).**PLANNING SCHEME**Enforcement of planning control. *See* **Town and country planning** (Enforcement of planning control—Land subject to resolution to prepare planning scheme).**PLANT**Capital allowances. *See* **Income tax** (Capital allowances—Plant).

PLANT (cont)

Factory—

Explosive or inflammable substance—

Plant, etc containing substance. *See* **Factory** (Explosive or inflammable substance).

Income tax—

Allowance. *See* **Income tax** (Capital allowances—Plant).Investment grant. *See* **Investment grant** (Machinery and plant).

Rates—

Plant deemed to be part of hereditament. *See* **Rates** (Plant and machinery deemed to be part of hereditament).Valuation. *See* **Rates** (Valuation—Plant and machinery).Safe system of working. *See* **Safe system of working** (Plant).

Wear and tear—

Deduction in computing profits for income tax. *See* **Income tax** (Deduction in computing profits—Wear and tear of machinery or plant).**PLATE**

Gold plate—

Wedding ring—

Need to bear hall-mark—Plate (Offences) Act 1738, ss 1, 5—Gold Plate (Standard) Act 1798, ss 1, 2, 6—Wedding Rings Act 1855, s 1—Gold Wares (Standard of Fineness) Order 1932 (S R & O 1932 No 654), art 2. **Westwood v Cann** [1952] 2 349, CA.

Silver plate—

Exposure to sale of silver plate below statutory standard—

Cigarette case—Absence of hall-mark—Obligation to mark sub-standard goods—Liability of seller to penalty—Forfeiture of article—Stat 8 & 9 Will 3 c 8, s 8 (as amended by Plate Duty Act 1719, s 3)—Plate (Offences) Act 1738, ss 1, 5. **Westwood v Cann** [1950] 2 805, KBD.**PLATFORM**

Railway station—

Whether 'public place' within meaning of Public Order Act 1936. *See* **Public order** (Public place—Offensive conduct conducive to breaches of the peace—Disturbance on railway platform).**PLATING**

Certificate—

Goods vehicle. *See* **Road traffic** (Plating and test certificates for goods vehicles).**PLAY**

Copyright—

Rights of owner of copyright in title of work. *See* **Copyright** (Rights of owner of copyright—Rights in title of work—Play).**PLEA**

Criminal cases—

Legal aid. *See* **Legal aid** (Criminal cases—Offer of legal aid—Guilty plea).Criminal trial. *See* **Criminal law** (Trial—Plea).**PLEADING**

Admission—

Illegality—

Admission of consent—Consent given under illegal hire-purchase agreement—Whether admission effective. **Belvoir Finance Co Ltd v Harold G Cole & Co Ltd** [1969] 2 904, QBD.

Amendment—

Amendment at trial or hearing—

Necessity for amendment where new case set up at hearing. **J Leavey & Co Ltd v George H Hirst & Co Ltd** [1943] 2 581, CA.Statement of claim—Damages for breach of contract—Application at trial to alter whole basis of claim. **Perestrello E Companhia Limitada v United Paint Co Ltd** [1969] 3 479, CA.

Appeal—

Review of exercise of judge's discretion. *See* **Appeal** (Review of exercise of discretion—Circumstances in which court will interfere—Pleading—Amendment).

Appeal against leave to amend—

Test—Libel action. **Cadam v Beaverbrook Newspapers Ltd** [1959] 1 453, CA.

Appeal against refusal of leave to amend—

Refusal of leave to amend defence at trial—Principle on which discretion to give leave to amend should be exercised—Whether Court of Appeal would interfere with exercise of discretion by trial judge—Whether amendment should be formulated in writing at trial or on appeal—RSC Ord 28, r 1, Ord 58, r 3(2). **G L Baker Ltd v Medway Building and Supplies Ltd** [1958] 3 540, CA.

Application for leave to amend—

Necessity for amendment to be reduced into writing. **Derrick v Williams** [1939] 2 559, CA.

Effect—

Landlord's action for possession—Defence and counterclaim containing general traverse—Subsequent amendment admitting landlord's title—Claim of forfeiture based on denial of landlord's title by the original defence—Whether amendment removed effect of original denial. **Warner v Sampson** [1959] 1 120, CA.

Leave to amend after close of case—

Application for leave to amend after close of case but before judgment—**Loutfi v C Czarnikow Ltd** [1952] 2 823, QBD.

PLEADING (cont)

Amendment (cont)—

Leave to amend after close of pleadings—

Amendment at trial—Allegation of breach of statutory duty—RSC Ord 28, r 1. **Hunt v Rice & Son Ltd** [1937] 3 715, CA.

Claim for injunction—Effect of new legislation—Legislation enacted after close of pleadings—QQuestion whether injunction should be granted to be determined by reference to law at date of trial—New legislation giving effect to law of European Economic Community—Action for infringement of copyright—Leave to amend defence—Allegation that injunction would assist plaintiff to abuse dominant position and to restrict competition in breach of community laws—Whether leave to amend should be given. **Application Des Gaz SA v Falks Veritas Ltd** [1974] 3 51, CA.

Defence—Leave given to amend statement of claim—Implied leave to amend defence—Scope of power to amend defence without special leave—Whether defendant entitled to amend defence without limit—Whether right to amend defence limited to matters consequential on amendments to statement of claim. **Squire v Squire** [1972] 1 891, CA.

Leave to amend defence at trial—Necessity of pleading peculiar sense of document under foreign law—Document agreed translation of foreign agreement—Special meaning of terms—Adjournment on security for costs being given—Necessity. **Aschberg Hopwood and Crew Ltd v Casa Musicale Sonzogno Di Piero Societa in Nome Collectivo** [1971] 3 38, CA.

Time for amendments to be made—Leave to amend pleadings given at trial but amendments not made until after judgment delivered—Judgment to be post-dated to date when all amendments of pleadings have been made. **Luby v Newcastle-under-Lyme Corp** [1964] 3 169, CA.

Leave to amend after expiry of limitation period—

Defence—Action for damages for personal injury—Negligence of plaintiff sought to be raised by amendment after three years after accident—Alleged failure to wear safety helmet provided by employers—Employers not parties to action—No allegation of fault on part of employers—Amendment sought after time for joining employers as defendants—Plaintiff not prejudiced by amendment. **Turner v Ford Motor Co Ltd** [1965] 2 583, CA.

Defence—Damage—Novus actus interveniens in chain of causation of damages—Discovered by defendant after delivery of defence and after expiry of period of limitation for action by plaintiff against third person—Defendant not at fault—Whether defendant entitled to leave to amend. **Weait v Jayanbee Joinery Ltd** [1962] 2 568, CA.

Statement of claim—Amendment to be allowed if just—RSC Ord 20, r 5. **Chatsworth Investments Ltd v Cussins (Contractors) Ltd** [1969] 1 143, CA.

Statement of claim—Negligence or breach of statutory duty alleged by employee against employers—Extension of original claim for negligence or breach of duty by alleging vicarious responsibility—Not new cause of action—Whether amendment should be allowed. **Dornan v J W Ellis & Co Ltd** [1962] 1 303, CA.

Statement of claim—Partners—Claim by three partners for damages for breach of contract—Statement of claim alleging contract made by one partner on behalf of all three—Amendment sought after expiration of limitation period to allege contract made by one partner on behalf of himself or on behalf of himself and his other partner—Rights assigned in equity to present partners—Whether new cause of action raised. **Robinson v Unicos Property Corp** [1962] 2 24, CA.

Statement of claim—Statute-barred cause of action introduced by amendment—Alleged negligence of solicitor—Allegation of breach of duty under joint retainer by two clients—Amendment by alleging separate retainers by each client. **Hall v Meyrick** [1957] 2 722, CA.

Statutory bar—Sunday Observances Act 1780, s 5. **Green v Kursaal (Southend-on-Sea) Estates Ltd** [1937] 1 732, KBD.

Leave to amend statement of claim—

Generally. *See* **Statement of claim** (Leave to amend).

Statement of claim—

Generally. *See* **Statement of claim** (Amendment).

Appeal against leave to amend. *See* **Amendment**—Appeal against leave to amend, *ante*.

Condition of mind. *See* **Particulars**—Condition of mind, *post*.

Conversion—

Unidentified goods. *See* **Particulars**—Conversion, *post*.

Copyright—

Infringement—

Reproduction. *See* **Copyright** (Infringement—Reproduction—Pleading).

Counterclaim—

Charterparty—

Breach of obligation to provide cargo delay ship's becoming an arrived ship—Whether defence to action or matter of counterclaim. **Sociedad Financiera de Bienes Raices SA v Agrimpex Hungarian Trading Co for Agricultural Products** [1960] 2 578, HL.

Damage—

Exemplary damages—

Grounds justifying award of exemplary damages—No need to plead. **Cassell & Co Ltd v Broome** [1972] 1 801, HL.

Special damage—

Need to plead—Breach of contract—Damage of a kind which is not the necessary and immediate consequence of the breach—Damage which can be precisely calculated—Claim particularising expenditure by plaintiff rendered abortive by breach—Plaintiff at trial seeking to lead evidence of, and recover, loss of profits had expenditure not been rendered abortive by breach. **Perestrello E Companhia Limitada v United Paint Co Ltd** [1969] 3 479, CA.

PLEADING (cont)

Damage (cont)—

Special damage (cont)—

Need to plead—Breach of contract—Sale of goods—Goods supplied alleged to be valueless—Full purchase price claimed—Alternative claim where goods not valueless, but depreciated. **Anglo-Cyprian Trade Agencies Ltd v Paphos Wine Industries Ltd** [1951] 1 873, KBD.
Need to plead—Personal injuries—Loss of wages between accident and trial not pleaded as special damage—No power to include in general damages. **Ilkiw v Samuels** [1963] 2 879, CA.

Personal injuries—Special circumstances likely to lead plaintiff to sustain future losses other than those reasonably to be expected to flow from accident—Intention of plaintiff employee to set up in business on own account frustrated by accident—Claim for compensation for loss of profits plaintiff would have earned in own business. **Domsalla v Barr (Trading as A B Construction)** [1969] 3 487, CA.

Wrongful dismissal—

Loss of remuneration—Whether claimant must give particulars of his taxable income and tax assessments and allowances. **Phipps v Orthodox Unit Trusts Ltd** [1957] 3 305, CA.
Remuneration during period of alleged contractual notice. **Hayward v Pullinger & Partners Ltd** [1950] 1 581, KBD.

Default of pleading—

Counterclaim—

Default in delivering reply—Motion for judgment—Action still pending—Subject-matter of action and counterclaim indivisible—RSC Ord 27, r 11. **Rogers v Wood** [1948] 1 38, ChD.

Defence—

Particulars before defence. *See* Particulars—Particulars before defence, *post*.

Delivery—

Long vacation—

Irregularity—Statement of claim delivered in long vacation—No defence filed within time allowed—Judgment signed in default of defence—Whether statement of claim void or voidable—Whether judgment should be set aside—RSC Ord 64, r 4, Ord 70, r 1. **MacFoy v United Africa Co Ltd** [1961] 3 1169, PC.

Time—

Order dismissing action unless statement of claim be served on or before specified date—Delivery after 4 pm on specified date—RSC Ord 64, r 11. **Kaye v Levinson** [1950] 1 594, CA.

Departure—

Legal consequences of pleaded facts—

Pleading setting out material facts and legal consequences sought to be drawn from facts—Party not precluded at hearing from seeking to draw different consequences from pleaded facts. **Re Vandervell's Trusts (No 2)** [1974] 3 205, CA.

New ground inconsistent with previous pleading—

Inconsistency—Mutually exclusive or merely different—Claim by personal representatives to set aside gift by deceased to defendant—Allegation in statement of claim of undue influence over deceased by defendant—Defendant alleging that gift made on advice of deceased's husband—Plaintiffs alleging in reply that gift procured by undue influence of deceased's husband—Whether reply inconsistent with statement of claim—RSC Ord 18, r 10(1). **Herbert v Vaughan** [1972] 3 122, ChD.

Discovery—

Particulars before discovery. *See* Particulars—Particulars before discovery, *post*.

Divorce. *See* Divorce (Practice—Pleading).

Easement—

Lost grant. *See* Particulars—Lost grant—Easement, *post*.

Estoppel—

Matters pleaded in previous proceedings—

Effect—Whether confessions of truth of facts stated. **In the Estate of Park** [1953] 2 408, Prob.

Estoppel. *See* Estoppel (Pleading).

Exemplary damages. *See* Damage—Exemplary damages, *ante*.

Fair comment—

Libel—

Particulars. *See* Libel and slander (Particulars—Fair comment).

Forfeiture of lease—

Defence. *See* Particulars—Defence—Forfeiture of lease, *post*.

Highway Code—

Particulars. *See* Particulars—Negligence—Action for damages for negligence—Plaintiff relying on 'all the provisions of the Highway Code', *post*.

Intention. *See* Particulars—Condition of mind—Plaintiff's stage of mind, *post*.

Interrogatories—

Defamation actions. *See* Libel and slander (Interrogatory).

Justification—

Libel—

Particulars. *See* Libel and slander (Particulars—Justification).

Leave to amend statement of claim. *See* Amendment—Leave to amend statement of claim, *ante*.

Libel and slander. *See* Libel and slander (Pleading).

Limitation period—

Leave to amend pleadings after expiry of limitation period. *See* Amendment—Leave to amend after expiry of limitation period, *ante*.

Long vacation—

Delivery. *See* Delivery—Long vacation, *ante*.

PLEADING (cont)

Loss of wages between accident and trial—

Special damage—

Need to plead. *See* Damage—Special damage—Need to plead—Personal injuries—Loss of wages between accident and trial not pleaded in special damage, *ante*.

Lost grant—

Particulars. *See* Particulars—Lost grant, *post*.

Negligence—

Generally. *See* Negligence (Pleading).

Particulars. *See* Particulars—Negligence, *post*.

Notice—

Allegation that person had notice. *See* Particulars—Notice, *post*.

Ownership of property—

Particulars. *See* Particulars—Ownership of property, *post*.

Particulars—

Account—

Particulars sought by defendant of sums paid to him by plaintiff—RSC Ord 19, r 7(b). **Sharer v Wallace** [1950] 2 463, ChD.

Action for account. *See* Account (Action for—Particulars).

Admission—

Occurrence of accident in course of employment admitted—No admission made as to the circumstances—Whether particulars of the accident admitted should be ordered. **Fox v H Wood (Harrow) Ltd** [1962] 3 1100, CA.

Application for particulars—

Power of Master to order particulars to be given by reference to plan. **Tarbox v St Pancras Borough Council** [1952] 1 1301, CA.

Condition of mind—

Condition of mind alleged as a fact—Whether particulars can be ordered—RSC Ord 19, rr 4, 7, 22, 23. **Burgess v Beethoven Electrical Equipment Ltd** [1942] 2 658, CA.

Plaintiff's state of mind—Absence of intention to make a gift to woman with whom plaintiff lived as his wife—Particulars of facts relied on—House conveyed into name of defendant, the unmarried wife—Plaintiff claimed half share in proceeds of sale of house—Alleged that contributions made by him towards purchase of house were never intended as gift to the defendant—Whether particulars of allegation of absence of intention would be ordered—RSC, Ord 18, r 12(1)(b). **Feeney v Rix** [1968] 3 22, CA.

Conversion—

Unidentified goods—Whether goods must be specified and conversion of particularised goods proved—Value and general nature of goods pleaded. **Brightside and Garbrook (Sheffield) Co-operative Society Ltd v Phillips** [1964] 1 49, CA.

Defamation cases. *See* Libel and slander (Particulars).

Defence—

Forfeiture of lease—Onus on plaintiff to prove case—Defendant's denial involving double negative. **Duke's Court Estates Ltd v Associated British Engineering Ltd** [1948] 2 137, ChD.

No obligation to plead to particulars. **Chapple v Electrical Trades Union** [1961] 3 612, ChD.

Knowledge—

Allegation that man knew or ought to have known. **Fox v H Wood (Harrow) Ltd** [1962] 3 1100, CA.

Libel—

Fair comment—Rolled-up plea—Particulars of facts relied on. **Tudor-Hart v British Union for the Abolition of Vivisection** [1937] 4 475, CA.

Justification—Particulars of justification—Whether before or after discovery—RSC Ord 19, rr 4, 27. **Goldschmidt v Constable & Co** [1937] 4 293, CA.

Letters alleged to be defamatory—Plaintiff ignorant of contents—Whether particulars to be delivered. **Collins v Jones** [1955] 2 145, CA.

Material facts—Plaintiff not referred to by name or description other than nationality. **Bruce v Odhams Press Ltd** [1936] 1 287, CA.

Libel. *See* Libel and slander (Particulars).

Lost grant—

Easement—Whether particulars should be ordered. **Gabriel Wade & English Ltd v Dixon & Cardus Ltd** [1937] 3 900, ChD.

Particulars of lost grant which may be ordered—Particulars of whether lost grant alleged to have been made before or after certain dates. **Tremayne v English Clays Lovering Pochin & Co Ltd** [1972] 2 234, ChD.

Malicious prosecution—

Denial by defendant of absence of reasonable or probable cause—Whether particulars of defence would be ordered. **Stapeley v Annetts** [1969] 3 1541, CA.

Marine insurance—

Particulars of defence—Shipowner's claim against insurer for loss of ship—Insurer alleging loss due to wilful casting away of ship—Shipowner applying for further and better particulars of insurer's defence—Practice of Commercial Court not to order such particulars—Validity of practice—RSC Ord 18, r 12(1)(a), Ord 72, r 7(2). **Astrovlanis Compania Naviera SA v Linard** [1972] 2 647, CA, **The Dias** [1972] 2 1112, CA.

Negligence—

Action for damages for negligence—Plaintiff relying on 'all the provisions of the Highway Code applicable'—Whether further and better particulars invited. **Wells v Weeks** [1965] 1 77, QBD.

Departure from case originally pleaded. *See* Practice (Trial—Departure from case originally pleaded—Particulars of negligence).

PLEADING (cont)

Particulars (cont)—

Notice—

Allegation that person had notice—Notice contrasted with knowledge—Notice that cheque being dealt with without owner's authority alleged against bankers—Materiality of form and precise terms of notice, or of circumstances from which notice was to be inferred—RSC Ord 19, rr 22, 23. **Cresta Holdings Ltd v Karlin** [1959] 3 656, CA.

Ownership of property—

Personality—Ownership claimed by both parties—Neither party in position to allege possession—Whether particulars of title should be ordered. **Kemlo v Heath** [1964] 2 596, ChD.

Particulars before defence—

Allegation that defendant was in breach of the duty that as banker it owed to plaintiff as customer—Allegation ambiguous as to nature of duty—Plaintiff should specify with precision the relation under which duty arose. **Selangor United Rubber Estates Ltd v Cradock** [1964] 3 709, ChD.

Matters within knowledge of defendant—Action for breach of contract—Breach of term as to time for delivery of car—RSC Ord 19, r 7. **Ross v Blakes Motors Ltd** [1951] 2 689, CA.

Particulars before discovery—

Special circumstances—Action by managing agents for wrongful dismissal—Defence alleging breaches of duty as managing agents—Allegations couched in general terms—Order that defendants give particulars of breaches known to them on which intending to rely at trial—Particulars not limited to breaches known to defendants at date of dismissal. **Cyril Leonard & Co v Simo Securities Trust Ltd** [1971] 3 1313, CA.

Personal injuries actions—

Particulars to give plaintiff's age or date of birth. **Practice Note** [1974] 3 976, QBD.

Secret process—

Expert's inspection—Order for inspection by expert in lieu of order for particulars—Claimant for order should take initiative in explaining process in detail to expert. **Printers and Finishers Ltd v Holloway** [1964] 3 54, ChD.

Traverse of negative allegation—

Negative not pregnant with affirmative—Whether particulars of traverse should be ordered. **Chapple v Electrical Trades Union** [1961] 3 612, ChD.

Negative pregnant with affirmative allegation—Defendant denying negative allegations in statement of claim—Burden of proof on plaintiff—Defence importing nothing beyond that which was in any event to be implied from a mere denial of plaintiff's allegations—Whether particulars of defence should be ordered. **Howard v Borneman** [1972] 2 867, ChD.

Negative pregnant with affirmative allegation—Denial that defendant 'failed to furnish any such particulars without reasonable excuse—RSC Ord 19, rr 7, 19. **Inland Revenue Comrs v Jackson** [1960] 3 31, CA.

Negative pregnant with affirmative allegation—Evasive denial—Amendment—RSC Ord 19, rr 7, 19. **Pinson v Lloyds and National Provincial Foreign Bank Ltd** [1941] 2 636, CA.

Wrongful dismissal—

Particulars of employment and earnings since dismissal—Period claimed by plaintiff as reasonable notice—Claim for particulars before defence—RSC Ord 19, r 7B. **Monk v Redwing Aircraft Co Ltd** [1942] 1 133, CA.

Special damage—Loss of remuneration—Whether particulars of taxable income must be given. **Phipps v Orthodox Unit Trusts Ltd** [1957] 3 305, CA.

Personal injuries actions—

Particulars of plaintiff's age or date of birth. *See* Particulars—Personal injuries actions—

Particulars to give plaintiff's age or date of birth, *ante*.

Point of law—

Admission of facts alleged and objection in point of law—

Evidence on behalf of plaintiff—Whether evidence admissible on behalf of plaintiff. **Pioneer Plastic Containers Ltd v Commissioners of Customs and Excise** [1967] 1 1053, ChD.

Preliminary point—

Expediency of pleading point of law that may dispose of whole matter—Whether preliminary point of law may be raised at trial although not pleaded—RSC Ord 25, r 2. **Independent Automatic Sales Ltd v Knowles & Foster** [1962] 3 27, ChD.

Prescription—

Right of way. *See* Easement (Right of way—Prescription—Pleadings).

Reply—

Estoppel—

Estoppel arising after issue of writ—Amendment by plaintiff to pleading. **Morrison Rose & Partners (a firm) v Hillman** [1961] 2 891, CA.

Service. *See* Practice (Service—Reply to defence).

Restraint of trade. *See* Restraint of trade by agreement (Pleading).

Sale of goods—

Special damage. *See* Damage—Special damage—Need to plead—Breach of contract, *ante*.

Secret process—

Particulars. *See* Particulars—Secret process, *ante*.

Service. *See* Practice (Service).

Special damage. *See* Damage—Special damage, *ante*.

Statement of claim—

Delivery—

Delay—Dismissal of action for want of prosecution. *See* Practice (Dismissal of action for want of prosecution)—Delay—Delay in delivering statement of claim).

Generally. *See* Statement of claim.

Statute—

Limitation period. *See* Limitation of action (Statute—Pleading).

PLEADING (cont)

Striking out—

Application—

Need for precise indication of what should be struck out. **Carl-Zeiss-Stiftung v Rayner and Keeler Ltd (No 3)** [1969] 3 897, ChD.

Defence—

Defence tending to prejudice, embarrass or delay fair trial—General denial of every allegation of fact in statement of claim—Each allegation not set out separately and denied specifically—Effective denial of every allegation—RSC Ord 19, r 27. **John Lancaster Radiators Ltd v General Motor Radiator Co. Ltd** [1946] 2 685, CA.Order that paragraphs be struck out in default of further and better particulars within 21 days—Imperfect particulars delivered in time—No default warranting striking out of paragraphs—Automatic striking out on default. **Reiss v Woolf** [1952] 2 112, CA.Vexatious and oppressive—Inherent jurisdiction of Court of Appeal to strike out. **Charles Oxford Ltd v Gonshaw Ltd** [1948] 2 229, CA.Divorce. *See* **Divorce** (Practice—Pleading—Striking out).

Estoppel per rem judicatam—

Refusal to strike out—Complexity of issue not a ground for refusal. **Carl-Zeiss-Stiftung v Rayner and Keeler Ltd (No 3)** [1969] 3 897, ChD.

Exercise of court's powers—

Jurisdiction discretionary—RSC Ord 18, r 19. **Carl-Zeiss-Stiftung v Rayner and Keeler Ltd (No 3)** [1969] 3 897, ChD.Jurisdiction of county court. *See* **County court** (Jurisdiction—Striking out pleading).

Order of Court of Appeal—

Reliance on decision at nisi prius—Gaming debt—Action brought as on an account stated—Gaming Act 1892, s 1—RSC Ord 25, r 4. **Law v Dearnley** [1950] 1 124, CA.

Order striking out pleading—

Appeal against order—Whether order interlocutory for purposes of leave to appeal—Supreme Court of Judicature (Consolidation) Act 1925, s 31(1)(i)—RSC Ord 25, r 4. **Hunt v Allied Bakeries Ltd** [1956] 3 513, CA.Statement of claim. *See* **Statement of claim** (Striking out).Sufficiency. *See* **Practice** (Trial—Departure from case originally pleaded).

Traverse—

Effect—

Action for possession—Whether general traverse denial of landlord's title entailing forfeiture. **Warner v Sampson** [1959] 1 120, CA.Negative allegation. *See* **Particulars**—Traverse of negative allegation, *ante*.

Wrongful dismissal—

Particulars. *See* **Particulars**—Wrongful dismissal, *ante*.**PLEASURE GROUND**Right to enjoy. *See* **Easement** (Pleasure ground—Right to enjoy pleasure ground).**PLEDGE**

Mercantile agent—

Possession of goods—

Pledge of documents. *See* **Agent** (Mercantile agent—Possession of goods—Consent of owner—Pledge of documents).

Pledge of chattel—

Registration—

Need of registration. **Waight v Waight and Walker** [1952] 2 290, Div.

Sale of goods—

Documents of title to goods sent by unpaid vendors to merchant bankers. *See* **Bank** (Documentary credit—Irrevocable credit—Undertaking to provide funds to meet drafts—Selling agents opening for their foreign principals, timber exporters, on irrevocable c**PLYING FOR HIRE**Hackney carriage. *See* **Road traffic** (Hackney carriage—Plying for hire).**POINT OF LAW**

Appeal—

Income tax. *See* **Income tax** (Appeal—Point of law).

Income tax—

Appeal. *See* **Income tax** (Appeal—Point of law).

Error or mistake—

Relief—Case stated. *See* **Income tax** (Case stated—Relief in respect of error or mistake—Point of law).Reference following acquittal of accused. *See* **Criminal law** (Appeal—Reference of point of law following acquittal of accused).**POISON**Administering. *See* **Criminal law** (Administering poison or other destructive or noxious thing).

Sale by retail—

Corporate body—

Sale under supervision of superintendent—Sufficiency of supervision—Pharmacy and Poisons Act 1933, s 9(1)(2). **Hygienic Stores Ltd v Coombes** [1938] 1 63, KBD.

Prohibition on sale by person other than authorised seller—

Exemption with respect to sale by way of wholesale dealing—Wholesaler selling drugs containing poison to retail shop for sale by retail—Neither proprietor of retail shop nor her employees authorised sellers—Whether wholesalers committed offence—Pharmacy and Poisons Act 1933, ss 18(1)(a)(i), 20(1), 29. **Oxford v Sangers Ltd** [1965] 1 96, QBD.

POISON (cont)

Sale by retail (cont)—

Sale to be effected by or under supervision of registered pharmacist—

Exemption with respect to medicines—Failure to comply with conditions of exemption—Whether in itself an offence—Meaning of 'medicine'—Pharmacy and Poisons Act 1933, ss 18, 19, 24. **R v Staincross Justices, ex parte Teasdale** [1960] 3 572, QBD.

Registered pharmacist in another room on premises—Pharmacist out of sight and hearing—Sufficiency of supervision—Pharmacy and Poisons Act 1933, s 18(1)(a)(iii). **Roberts v Littlewoods Mail Order Stores Ltd** [1943] 1 271, KBD.

Time at which sale effected—Chemist's self-service shop—Pharmacist supervising transaction at time of payment—Pharmacy and Poisons Act 1933, s 18(1)(a)(iii). **Pharmaceutical Society of Great Britain v Boots Cash Chemists (Southern) Ltd** [1953] 1 482, CA.

POLICE

Accident—

Report to police—

Traffic accident. *See* **Road traffic** (Accident—Duty to stop and furnish particulars—Report to police).

Admissions and confessions to police—

Admissibility in criminal proceedings. *See* **Criminal evidence** (Admissions and confessions—Answers and statements to police).

Arrest without warrant by. *See* **Arrest** (Arrest without warrant).

Assault on constable in execution of duty—

Assault—

Meaning—Accused driving car on to constable's foot when parking car on constable's direction—Car remaining on constable's foot after request to move car—Whether assault—Police Act 1964, s 51(1). **Fagan v Metropolitan Police Comr** [1968] 3 442, QBD.

Defence—

Assault to free son from custody—Son's arrest lawful—Whether genuine belief that son's restraint unlawful a defence—Police Act 1964, s 51(1). **R v Fennell** [1970] 3 215, CA.

Self-defence—Police officers in plain clothes detaining boys in order to put questions to them—Technical assault by police officers as they were not effecting arrest of the boys—Assault by boys on police officers—Genuine misunderstanding on both sides—Self-defence—Police Act 1964, s 51(1). **Kenlin v Gardiner** [1966] 3 931, QBD.

Duty—

Attempt to stop suspect to make enquiries—No charge or arrest at that time—Constable touched suspect on shoulder—Suspect struck constable—Alleged assault on constable in execution of duty. **Donnelly v Jackman** [1970] 1 987, QBD.

Police officers entering garden of house and knocking on front door to inquire about alleged offence—Police sergeant invited inside and leaving when requested to do so by tenant of house—Other officers remaining in garden of house—Assault on police sergeant as he was leaving house—Other officers coming to sergeant's assistance—Assault on sergeant and officer in general mêlée—Whether officers were trespassers—Implied licence to enter garden and approach front door—Whether officers were acting in execution of duty—Police Act 1964, s 51(1). **Robson v Hallett** [1967] 2 407, QBD.

Preventing removal of privately owned car, the subject-matter of evidence of crime—No charge nor arrest at that time—Alleged assault of constable in execution of duty—Whether constable acting within the execution of his duty in trying to prevent removal of car—Whether statutory power so to do under Road Traffic Act 1960, s 223. **R v Waterfield, R v Lynn** [1963] 3 659, CCA.

Execution of duty—

Entry on premises without search warrant—Refusal to leave when asked—Constable trespasser no longer acting in execution of duty. **Davis v Lisle** [1936] 2 213, KBD.

Borough police force—

Constable—

Dismissal—Confirmation by watch committee—Right of member dismissed—Policeman acting as fireman—Public authority—Public Authorities Protection Act 1893, s 1—Police Act 1919, s 4(1)—Police Regulations 1920 (S R & O 1920 No 1484), regs 15, 16, 18, 94. **Kilduff v Wilson** [1939] 1 429, CA.

Resignation—Acceptance—Cancellation—Dismissed after expiration of notice—Validity—Power to dismiss—Right to declaration—Municipal Corporations Act 1882, s 191(4)—Police Act 1919—Police Pensions Act 1921—Police (Appeals) Act 1927. **Cooper v Wilson** [1937] 2 726, CA.

Caution—

Answers and statements to the police. *See* **Criminal evidence** (Admissions and confessions—Answers and statements to the police—Caution).

Chief constable—

Dismissal—

Natural justice—County borough police force—Summary dismissal of chief constable by watch committee—Whether rules of natural justice applicable to proceedings for dismissal—Chief constable previously indicted for alleged criminal offences—Acquitted, but conduct severely criticised by trial judge—Appeal against decision of watch committee dismissed by Home Secretary—Whether action by chief constable thereby barred—Municipal Corporations Act 1882, s 191(4)—Police Act 1919, s 4(1)—Police (Appeals) Act 1927, s 2(3)—Police (Discipline) (Deputy Chief Constables, Assistant Chief Constables and Chief Constables) Regulations 1952 (S I 1952 No 1706), regs 1, 18. **Ridge v Baldwin** [1963] 2 66, HL.

Compensation—

Criminal injuries. *See* **Compensation** (Criminal injuries).

Compulsory purchase of land for. *See* **Land**—Acquisition of land for police purposes, *post*.

POLICE (cont)

Compulsory retirement—

Permanent disablement—

Reference to medical practitioner—Medical practitioner's decision of judicial character—
Application of natural justice to determination—Independent medical practitioner—
Material medical practitioner entitled to consider—Police officer's medical advisers entitled
to see same material—Police force's medical officer of health disqualified from deciding
question of officer's disablement where he has already expressed an opinion on officer's
health—Police Pensions Regulations 1971 (S I 1971 No 232), reg 70(2). **Re Godden** [1971]
3 20, CA.

Conduct—

Commission of offence to secure evidence against offender—

Accomplice—Car used by police officer in such a way as to enable prostitute to solicit—
Whether officer using car accomplice for purpose of doctrine of corroboration. **Sneddon**
v Stevenson [1967] 2 1277, QBD.

Undesirability. **Brannan v Peek** [1947] 2 572, KBD.

Use of informer—

Mitigating consequences of proposed offence—Participation in commission of offence. **R v**
Birtles [1969] 2 1131, CA.

Consolidation of borough and county police force—

Powers to be exercised by police authority—

Police authority—Police Pensions Act 1921, s 30, Sch III—House to House Collections Act
1939. **Swindon Borough Council v Herbert** [1941] 3 481, KBD.

Constable—

Arrest without warrant by. *See* **Arrest** (Arrest without warrant).

Duty—

Position of constable while off duty. **Davis v Minister of Pensions** [1951] 2 318, KBD.

Nature of office—

Servant of Crown—Loss of services of police officer due to negligence of third person—
Whether action per quod servitium amisit lay at suit of Crown. **Attorney-General for New**
South Wales v Perpetual Trustee Co (Ltd) [1955] 1 846, PC.

Power to stop, search and detain person suspected of having or conveying stolen property—

Metropolis—Suspicion of possession of stolen property—'Having or conveying' property in
street—Search during voluntary visit to police station—Metropolitan Police Act 1839, s 66.
Willey v Peace [1950] 2 724, KBD.

Probationary report on—

Production for inspection—Privilege. *See* **Discovery** (Privilege—Production contrary to public
interest—Probationary report on probationer police constable).

Service of billeting notice by. *See* **Billeting** (Billeting notice—Service—Service by police
constable in presence of billeting officer).

County police force—

Police expenses paid out of county fund—

Accident to police officer through negligence of third party—Officer's wages and allowances
during illness paid by county council—Right of county council to recover recover expenses
from third party—Local Government Act 1888, s 30(3). **Monmouthshire County Council**
v Smith [1957] 1 78, CA.

Dangerous drugs—

Evidence. *See* **Search warrant**—Dangerous drugs, *post*.

Discipline—

Transfer of officers. *See* **Metropolitan Police Force**—Discipline, *post*.

Dismissal—

Chief constable—

Natural justice. *See* **Chief constable**—Dismissal—Natural justice, *ante*.

Constable—

Confirmation by watch committee. *See* **Borough police force**—Constable—Dismissal—
Confirmation by watch committee, *ante*.

Power of Commissioner. *See* **Metropolitan Police Force**—Dismissal, *post*.

Duty of police to enforce law. *See* **Mandamus** (Chief officer of police—Enforcement of law).

Evidence by police—

Production of notebooks—

Denial of collaboration in preparing notes—Refusal by court to allow jury to inspect
notebooks. **R v Bass** [1953] 1 1064, CCA.

Impersonation—

Wearing articles of police uniform—

Appearance so nearly resembling that of police officer as to be calculated to deceive—
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Appearance so nearly resembling that of police officer as to be calculated to deceive—
Calculated to deceive—Meaning—Whether requiring an intention to deceive—Police Act
1964 s 52(2). **Turner v Shearer** [1973] 1 397, QBD.

Inducement—

Statement obtained by inducement—

Admissibility in criminal proceedings. *See* **Criminal evidence** (Admissions and confessions—
Inducement—Police).

Informer—

Disclosure to court by prosecution. *See* **Criminal law** (Trial—Prosecution—Informer).

Use of informer. *See* **Conduct**—Use of informer, *ante*.

Interference with police—

Vicinity of a prohibited place. *See* **Criminal law** (Official secrets—Interference with police
officers or members of HM forces—Vicinity of a prohibited place).

Land—

Acquisition of land for police purposes—

Duty of county council. **Wiltshire Standing Joint Committee v Wiltshire County Council**
[1951] 1 1041, KBD.

POLICE (cont)

Licensed premises—

Right of entry for purposes of preventing or detecting commission of offence. *See Intoxicating liquor* (Licensed premises—Constable—Right of entry).

Metropolitan Police Force—

Accident to police officer through negligence of third party—

Officer's wages and allowances during illness paid by Receiver—Right of Receiver to recover amount of wages from third party. **Metropolitan Police District Receiver v Croydon Corpn** [1957] 1 78, CA.

Discipline—

Transfer of officers after receipt of report—Whether transfer procedure can be used as a punishment—Disciplinary procedure not followed—Whether claim for declaration that transfer was without regard to Police (Discipline) Regulations 1952 (S I 1952 No 1705), should be struck out. **Merricks v Nott-Bower** [1964] 1 717, CA.

Dismissal—

Summary dismissal—Power of Commissioner—Officer convicted of theft—Metropolitan Police Act 1829, s 5—General Orders of Metropolitan Police Force, s 5(9). **Hogg v Scott** [1947] 1 788, KBD.

Power to arrest—

Suspicion of possession of stolen property—'Having or conveying' property in street—Search during voluntary visit to police station. **Willey v Peace** [1950] 2 724, KBD.

Receiver for Metropolitan Police District—

Treasurer of fund for the purposes of the police—Power to sue—Accident to police officer through negligence of third party—Hospital charges and officer's wages during illness paid by Receiver—Right of Receiver to recover expenses from third party—Metropolitan Police Act 1829, s 12—Metropolitan Police (Receiver) Act 1861, s 1. **Metropolitan Police District (Receiver) v Tatum** [1948] 1 612, KBD.

Notice—

Libel—

Qualified privilege. *See Libel and slander* (Qualified privilege—Report of notice issued by public authority for information of public—Police notice).

Obstruction—

Picketing. *See Trade dispute* (Picketing—Breach of peace anticipated—Obstruction of police).

Obstruction—Obstructing constable in execution of his duty. *See Criminal law* (Obstructing constable in execution of his duty).

Pension—

Appeal to quarter sessions—

Appeal against decision of medical referee—Jurisdiction of quarter sessions—Police Pensions Act 1948, s 5(1)—Police Pensions Regulations 1949 (S I 1949 No 1241), reg 45(1). **Ead v Home Secretary** [1954] 1 386, QBD.

Damages—

Whether pension taken into account when assessing police officer's damages for personal injuries. *See Damages* (Personal injury—Loss of future earnings—Pension—Compulsory contributory police pension).

Payment of pension—

Payment to persons ceasing to be members of force by reason of injury received in execution of duty—Duodenal ulcer contracted in consequence of conditions of service—'Whether of injury received in execution of duty'—Police Pensions Act 1921, s 2(1)(c). **Huddersfield Police Authority v Watson** [1947] 2 193, KBD.

Payment to persons ceasing to be members of force by reason of injury received in execution of duty—Tuberculosis contracted during period of service—Whether an 'injury'—Police Pensions Act 1921, s 2(1)(c). **Garvin v Police Authority for the City of London** [1944] 1 378, KBD.

Widow's special pension—Non-accidental injury—Special risks—Heart disease aggravated by duty—Police Pensions Act 1921, ss 3(b), 33(3). **Gordon v Barnsley Police Authority** [1948] 2 79, KBD.

Police authority—

Powers to be exercised by police authority. *See Consolidation of borough and county police force*—Powers to be exercised by police authority, *ante*.

Powers—

Arrest—

Suspicion of possession of stolen property. *See Metropolitan Police Force*—Power to arrest—Suspicion of possession of stolen property, *ante*.

Power to stop, search and detain—

Stolen property. *See Constable*—Power to stop, search and detain person suspected of having or conveying stolen property, *ante*.

Powers derived from emergency legislation—

Use of powers—Right to require production of identity cards. **Willcock v Muckle** [1951] 2 367, KBD.

Previous convictions at trial. *See Criminal law* (Trial—Previous convictions—Police).

Property in possession of police—

Delivery to owner—

Power of magistrates' court to order property to be delivered to person appearing to court to be owner—Owner—Meaning—Application by person having good title save against true owner by virtue of possession—True owner untraceable—Whether applicant 'owner'—Police (Property) Act 1897, s 1(1)(as amended by the Criminal Justice Act 1972, s 58). **Raymond Lyons & Co Ltd v Metropolitan Police Commissioner** [1975] 1 335, QBD.

Recovery of property—

Plaintiff's property seized by police in connection with theft—Delivered under magistrates' order in respect of stolen property—Conviction of plaintiff quashed—Action to recover property—Whether burden of proof on plaintiff to establish title to the property—Police (Property) Act 1897, s 1. **Irving v National Provincial Bank Ltd** [1962] 1 157, CA.

POLICE (cont)

Prosecutor—

Costs—

Police constable laying information and giving evidence—Police not legally represented—Prosecutor acting on behalf of Metropolitan Police—Costs—Costs in Criminal Cases Act 1952, s 17. *R v Burt, ex parte Presburg* [1960] 1 424, QBD.

Records—

Production for inspection—

Privilege. *See* **Discovery** (Privilege—Production contrary to public interest—Police records).

Recreational facilities—

Provision of—

Whether charitable purpose. *See* **Charity** (Benefit to community—Recreational facilities—Encouragement of athletic sports of police force).

Resignation of constable—

Cancellation of resignation and subsequent dismissal. *See* **Borough police force—Constable—Resignation, ante**.

Road traffic—

Direction by constable engaged in regulation of traffic—

Failure to comply with direction. *See* **Road traffic** (Direction—Failure to comply with direction—Direction by constable engaged in regulation of traffic).

Search warrant—

Dangerous drugs—

Evidence—Admissibility—Search of premises authorised by warrant—Warrant did not authorise search—Accused found on premises and searched—Warrant for search of person should expressly authorise such search—Dangerous drug found on accused—Discretion of court to admit evidence obtained as result of search. *King v Reginald* [1968] 2 610, PC.

Seizure of goods believed on reasonable grounds to be stolen goods—

Goods seized not of manufacture specified in warrant—Constable entered company's premises and seized goods of other manufacture believing on reasonable grounds them to be stolen goods received by an officer or officers of the company—Explanation subsequently made on behalf of company and accepted by police and goods returned—Whether police liable in action for trespass to goods. *Chic Fashions (West Wales) Ltd v Jones* [1968] 1 229, CA.

Speeding—

Exemption from restriction on driving at excessive speed. *See* **Road traffic** (Excessive speed—Exemption—Police).

Trap—

Admission obtained by trap. *See* **Criminal evidence** (Admissions and confessions—Trap—Police).

Vehicle—

Speeding—

Negligence. *See* **Negligence** (Vehicles—Speed—Police vehicle).

Witness—

Imputation on character of police witness. *See* **Criminal law** (Character of accused—Imputation on character of prosecutor or witness—Police).

POLICY

Insurance—

Husband and wife. *See* **Husband and wife** (Insurance policy).

Motor vehicle. *See* **Motor insurance**.

Proper law. *See* **Conflict of laws** (Contract—Proper law of contract—Insurance policy).

POLITICAL FUND

Trade union—

Member contracting out. *See* **Trade union** (Political fund—Member contracting out).

POLITICAL LAW

Foreign law—

Recognition. *See* **Conflict of laws** (Foreign law—Recognition—Political law).

POLITICAL OFFENCE

Extradition—

Restriction on surrender of fugitive criminal. *See* **Extradition** (Restrictions on surrender—Political offence—Offence of political character only as between offender and state other than requesting state).

POLL

Parish meeting. *See* **Local government** (Meeting—Parish meeting).

POLLUTION

Foreshore—

Public nuisance. *See* **Nuisance** (Public nuisance—Pollution of shore).

Oil—

Discharge into navigable waters—

Damage to adjoining land. *See* **Trespass to land** (Oil—Discharge of oil into public navigable waters—Damage to adjoining land).

River. *See* **Water and watercourses** (Pollution of river).

POLYGAMOUS MARRIAGE

Conspiracy—

Husband and wife. *See* **Criminal law** (Conspiracy—Husband and wife—Polygamous marriage).

POLYGAMOUS MARRIAGE (cont)

Maintenance—

Wife and children. *See* **National assistance** (Recovery of cost of assistance from husband—Polygamous marriage).

Nullity suit—

Jurisdiction. *See* **Nullity** (Jurisdiction—Polygamous marriage).

Relief. *See* **Nullity** (Polygamous marriage—Relief).

Potentially polygamous—

Right to summary matrimonial relief. *See* **Husband and wife** (Summary proceedings—Potentially polygamous marriage—Right to matrimonial relief).

Property—

Summary proceedings. *See* **Husband and wife** (Property—Summary proceedings—Jurisdiction—Polygamous marriage).

Right to contract polygamous marriage—

Ceylon. *See* **Ceylon** (Polygamous marriage—Right to contract polygamous marriage).

See **Marriage** (Polygamous).

POOL BETTING

See **Gaming** (Pool betting).

POOR LAW

Idle and disorderly person—

Running away and leaving wife and child whereby they became chargeable to public assistance committee—

Maintenance order against accused made by another court already in existence—Whether charge sustainable—Vagrancy Act 1824, s 4. **Batty v Lee** [1938] 4 207, KBD.

Order for maintenance—

Enforcement—

Jurisdiction. **London County Council v Betts** [1936] 1 144, KBD.

Relief—

Disability pension—

Factors to be considered—Whether first one pound of pension should be disregarded in considering application for relief—Poor Law (Scotland) Act 1934, s 11(1)(d). **Duncan v Aberdeen County Council** [1936] 2 911, HL.

Duty to grant relief—

Enforcement—Public assistance committee—Recommendation of medical officer—How far binding on committee—Discretion of committee—Poor Law Act 1930, s 15(1)—Public Assistance Order 1930 (S R & O 1930 No 185), reg 167—Relief Regulation Order 1930 (S R & O 1930 No 186), reg 10. **Cresswell and Cresswell v Liverpool Corpn** [1939] 2 824, Assizes.

Settlement—

Change of residence—

Former residence—Immediately before—Newport Extension Act 1934, s 26. **Newport Borough Council v Leicester County Council** [1937] 1 439, KBD.

Husband and wife living apart—

Wife and children deserted by husband—Wife and children in receipt of poor relief—Wife and children on change of residence becoming chargeable to another local authority—Order for removal to former locality—Validity—Maintenance order against husband—Poor Law Act 1930, ss 13, 18, 19(1), 84 (1) (2), 85 (1), 86(1) (2), 93(1)(f) (4). **Middlesex County Council v Essex County Council** [1940] 1 460, KBD.

State of irremovability—

Mental patient—Married woman—Settlement of husband—Mental Treatment Act 1930, s 18(1)(b). **Rochdale Corpn v Lancashire County Council** [1937] 1 559, KBD.

POOR PERSON

Costs. *See* **Costs** (Poor person).

PORT

Dock labour—

Licence to employ registered dock workers—

Refusal of licence. *See* **Licence** (Dock workers).

Dock labour scheme—

Application. *See* **Employment** (Dock labour scheme—Application—Port).

Meaning—

Dock Labour Scheme for South Wales Ports. *See* **Employment** (Dock labour scheme—

Application—Port—Port of Port Talbot—Meaning).

PORTABLE GRINDING MACHINES

Exemption from Grinding of Metals (Miscellaneous Industries) Regulations 1925. *See* **Factory** (Grinding machines—Regulations—Exemption of portable grinding machines).

PORTIONS

Accumulation of income—

Provision for raising portion. *See* **Accumulation** (Excessive period—Exception—Provision for raising portion).

Ademption. *See* **Administration of estates** (Ademption—Double portions).

Settlement. *See* **Settlement** (Portions).

POSSESSION

Adulterated milk. *See* **Food and drugs** (Milk—Adulteration of milk—Possession of adulterated milk for purpose of sale).

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Land—

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Bankruptcy—

Property held by bankrupt on trust for sale—

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Chattel found on another's property—

Building operation—

Workmen in cellar of demolished building finding bank notes in safe built in wall—True owners unknown—Whether freeholders, building leaseholders or finders entitled to notes—Whether, if finders entitled, they would be bound in law to account to their employers, who were independent contractors—Equitable title of freeholders by virtue of a provision of the building lease. **Corporation of London v Appleyard** [1963] 2 834, QBD.Right of finder to possession. **Hannah v Peel** [1945] 2 288, KBD.

Title to chattel—

Owner not shown to have surrendered title—Owner's title indefeasible. **Moffatt v Kazana** [1968] 3 271, Assizes.Conversion. *See* **Conversion** (Possession).

Crime—

Statutory offence—

Mental element—Meaning of being in 'possession' of prohibited substance. *See* **Drugs** (Dangerous drugs—Unauthorised possession—Mens rea).Dangerous drugs. *See* **Drugs** (Dangerous drugs—Possession).

Finder—

Right of possession—

Trover. *See* **Trover** (Right of possession—Finder—Brooch found in requisitioned house).

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Five years after sentence—

Suspended sentence. *See* **Sentence** (Firearms offence—Prohibition on possession of firearms within five years of sentence—Suspended sentence).Generally. *See* **Firearms** (Possession).Forged document. *See* **Criminal law** (Forgery—Possession of forged document).

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Land—

Defence to action for trespass. *See* **Trespass to land** (Defence—Lawful possession).Limitation of action. *See* **Limitation of action** (Land).Possession before completion of sale. *See* **Sale of land** (Possession before completion).

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Protected tenancy—

Recovery of possession. *See* **Rent restriction** (Possession).Recovery of possession. *See* **Landlord and tenant** (Recovery of possession).

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Forfeiture. *See* **Landlord and tenant** (Forfeiture of lease—Forfeiture—Action for possession by lessor).

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Deserted wife's right to remain. *See* **Husband and wife** (Deserted wife's right to remain in matrimonial home—Possession).

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Action by mortgagee for possession. *See* **Mortgage** (Action by mortgagee for possession).Mortgagee's right to recover possession. *See* **Mortgage** (Possession of mortgaged property—

Mortgagee's right to recover possession).

Mortgagor not in occupation. *See* **Mortgage** (Possession of mortgaged property—Mortgagor not in occupation).Order for possession of mortgaged property. *See* **Mortgage** (Order for possession of mortgaged property).

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Microscopic particles of dangerous drugs—

Whether sufficient to constitute 'possession'.

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Costs—Agricultural worker. *See* **Agriculture** (Agricultural worker—Tied cottage—Possession—Suspended order for possession—Costs).Leave to issue execution. *See* **Execution** (Leave to issue execution—Application—Suspended order of possession).

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Recovery—

Hire-purchase agreement. *See* **Hire-purchase** (Possession).

Landlord, by—

Illegal lease. *See* **Contract** (Illegality—Lease of land—Recovery of possession—Lease illegal).Procedure before magistrates. *See* **Landlord and tenant** (Recovery of possession—Procedure before magistrates).

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Restitution order—

Possession at time of apprehension. *See* **Sentence** (Restitution order—Safe deposit in accused's name—Money taken from safe deposit after arrest).

Salmon—

Possession for sale during close season. *See* **Fish** (Salmon and trout—Restriction on sale or possession for sale of salmon during close season).

Sheriff—

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Stolen goods—

Receiving. *See* **Criminal law** (Receiving stolen property—Possession).

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Suspended order for—

Costs—

Agricultural worker. *See* **Agriculture** (Agricultural worker—Tied cottage—Possession—Suspended order for possession—Costs).

Leave to issue execution. *See* **Execution** (Leave to issue execution—Application—Suspended order for possession).

Tied cottage—

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Title deeds—

Voluntary parting with possession—

Lien—Solicitor—Preservation of lien. *See* **Solicitor** (Lien—Title deeds).

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Distress for rent. *See* **Distress** (Distress for rent).

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County court. *See* **County court** (Execution—Warrant for possession of premises—Suspension of execution—Jurisdiction).

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Resumption of possession by person evicted—Jurisdiction to commit for contempt person evicted. *See* **Contempt of court** (Committal—Jurisdiction—Execution of writ of possession—Resumption of possession by person evicted—Jurisdiction to commit for contempt person evicted).

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Acceptance by post. *See* **Contract** (Offer and acceptance—Acceptance—Acceptance by post).

County court mail. *See* **County court** (Postal transactions).

Divorce—

Postal facilities in divorce registry. *See* **Divorce** (Practice—Postal facilities in divorce registry).

Indecent or obscene article sent by post—

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Meaning of obscene. *See* **Criminal law** (Obscene publications—Indecent or obscene—Obscene—Meaning—Items which are shocking or lewd—Sending postal packet enclosing indecent or obscene article).

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Queen's Bench Division. *See* **Practice** (Post—Use of postal facilities—Proceedings in Queen's Bench Division).

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Service by. *See* **Practice** (Service by post—Registered post).

Service by post—

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County court. *See* **County court** (Practice—Service of summons).

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Service on company. *See* **Writ** (Service on company—Service by post).

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Admiralty Registry. *See* **Practice** (Post—Use of postal facilities—Proceedings in Queen's Bench Division—Admiralty Registry).

POST OFFICE

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Delivery of mail. *See* **County Court** (Postal transactions—County court instructions to Post Office not to deliver mail on Saturdays).

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Date of service etc. *See* **Practice** (Post—First and second class mail—Affidavit of service).

Mail—

First and second class—

Date of service etc. *See* **Practice** (Post—First and second class mail—Affidavit of service).

Registered postal packet—

Carriage overseas—

Whether contractual relationship between sender and Her Majesty's Postmaster-General—Post Office Act 1908, s 13—British Commonwealth and Foreign Post Warrant 1948 (S I 1948 No 590), reg 49 (as substituted by S I 1950 No 771), reg 61. **Triefus & Co Ltd v Post Office** [1957] 2 387, CA.

Loss or damage to registered inland postal packet—

Damages—Measure of damages—Market value—Crown Proceedings Act 1947, s 9(2), provisos (b), (c). **Building and Civil Engineering Holidays Scheme Management Ltd v Post Office** [1965] 1 163, CA.

Savings Bank—

Deposit—

Transfer on death of holder—Rights of transferee. **Note** [1954] 1 519.

Dispute between Postmaster-General and creditor of depositor—

Dispute—Claim by creditor of depositor—Refusal by Postmaster-General of creditor's request for payment out of depositor's account—Statutory propriety of Postmaster-General's refusal unchallenged—Reference by creditor to register of friendly societies—Jurisdiction of registrar—Whether there was a dispute between the Postmaster-General and a creditor of the depositor within Post Office Savings Bank Act 1954, s 8(1)(b). **Re Jones** [1965] 2 428, QBD.

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POST-NUPTIAL SETTLEMENT

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POTATO MARKETING

Charge on registered producers—

Powers of Potato Marketing Board—

Powers to enter and inspect and to demand information relating to potatoes—Whether entitled to enter and measure acreage—Whether entitled to demand information of arable acreage—Potato Marketing Scheme 1955 (S I 1955 No 690), paras 81(1), 82(1), 83(1)(a). **Potato Marketing Board v Merricks** [1958] 2 538, QBD.

Producers exceeding basic acreage—Uniform charge on all registered producers—Whether proper exercise of board's powers—Potato Marketing Scheme 1933 (S R & O 1933 No 1186). **Potato Marketing Board v Harlow** [1936] 1 489, KBD.

Potato Marketing Board—

Disciplinary committee—

Constitution—Chairman to be not a member of the Potato Marketing Board but an 'independent person'—Chairman paid a fee by the board—Whether 'independent person'—Agricultural Marketing Act 1949, s 8(1)—Arbitration Act 1950, s 22—Potato Marketing Scheme 1955 (S I 1955 No 690), para 83(2)(a), (3). **Potato Marketing Board v Merricks** [1958] 2 538, QBD.

Scheme—

Substitutional scheme—

Draft scheme laid by Minister before Parliament for approval—Draft scheme challenged as ultra vires—Agricultural Marketing Act 1931, s 1. **Merricks v Heathcoat-Amory** [1955] 2 453, ChD.

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Keeping of records. *See* **Animal** (Poultry—Poultry dealer—Keeping of records).

Owner—

Right to kill dog chasing chickens. *See* **Animal** (Dog—Chasing chickens—Right of poultry owner to kill).

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Sale of feedings stuffs for use of. *See* **Agriculture** (Feeding stuffs—Sale for use as food for cattle and poultry).

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- Appointment. *See* **Power of appointment**.
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 - Director. *See* **Company** (Director—Power).
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- Discretionary trust—
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- Exercise of power—
 - Title—
 - Sale of land. *See* **Sale of land** (Title—Exercise of power a link in title).
- Implied release—
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 - Power to revoke settlement—Release of power—Subsequent inconsistent dealing—Settlor having life interest—Trustees empowered to pay or apply trust property for settlor's benefit at settlor's request—Deed of release assigning settlor's life interest in property to trustees—Trustees to hold released property on trusts declared by the trust instrument as if the settlor were dead—Whether settlor having effectively extinguished trustees' power to make provision for his benefit—Income Tax Act 1952, s 404(2). **Inland Revenue Comrs v Cookson** [1975] 3 590, ChD.
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 - Settlement. *See* **Settlement** (Investment—Power of investment).
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 - Mortgagee. *See* **Mortgage** (Sale—Exercise of power of sale).
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- Settlement—
 - Generally. *See* **Settlement** (Power).
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 - Disagreement as to exercise of power of sale. *See* **Settlement** (Powers of tenant for life—Joint tenant—Power of sale).
- Variation of settlement—
 - Joint power and power to survivor of spouses. *See* **Variation of settlement** (Extinction of party's interests as if dead—Joint power and power to survivor of spouses).

POWER OF ADVANCEMENT

- Rule against perpetuities. *See* **Rule against perpetuities**.

POWER OF APPOINTMENT

- Adoption—
 - Power to appoint among children or remoter issue—
 - Whether benefitting adopted grandchildren. *See* **Exercise by will—Special power—Objects, post**.
- Bare Power—
 - Exercise of power. *See* **Exercise of power—Bare power, post**.
- Collateral power to make grants—
 - No gift over in case of non-exercise—
 - Validity. **Re Sayer Trust** [1956] 3 600, ChD.
- Creation of power—
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 - Life interest in residuary estate bequeathed with full power to deal with capital as if donee's own—Gift over—Bequest effective to create general power of appointment. **Re Lawry's Estate** [1937] 4 1, ChD.
- Deed for benefit of employees—
 - Power or imperative trust. *See* **Settlement** (Power—Discretionary power—Discretion to make grants to 'dependants' and 'dependent relatives' of employees).
- Delegation of power—
 - Power with consent to appoint generally except to named persons—
 - Appointment to new trustees on discretionary trusts—Validity. **Re Triffitt's Settlement** [1958] 2 299, ChD.
- Excessive execution—
 - Appointment of absolute interest with gift over—
 - Gift over infringing perpetuity rule—Whether whole appointment invalid. **Re Pratt's Settlement Trusts** [1943] 2 458, ChD.
- Delegation of power—
 - Special power to appoint among children and issue—'In such manner in all respects' as appointor should appoint—Discretionary trusts after forfeiture of life interest under appointment. **Re Morris's Settlement Trusts** [1951] 2 528, CA.
 - Special power to appoint among children or remoter issue—Power to appoint with such trusts for their respective benefit and such provisions for their respective advancement, maintenance and education at the discretion of the trustees or of any other person or persons as appointor should appoint—Validity of appointment directing immediately discretionary trusts by incorporation of s 33(1)(ii)(b) of Trustee Act 1925. **Re Hunter's Will Trusts** [1962] 3 1050, ChD.
- Genuine intention to benefit objects—
 - Conditional gift of appointor's residue—Condition for appointees settling shares of appointed fund—Whether excessive exercise. **Re Burton's Settlements** [1954] 3 193, ChD.

POWER OF APPOINTMENT (cont)

Excessive execution (cont)—

Power to appoint £1,500—

Appointment of £1,000 free of duty—Whether appointment in excess of power. **Re Lonsdale's Will Trusts** [1959] 3 679, CA.

Power to appoint £25,000—

Appointment of £15,000 clear of death duties—Total sum including duties exceeding £25,000. **Re Keele Estates** [1952] 2 164, CA.

Power to appoint part of income not exceeding in whole stated annual sum—

Whether appointment of that sum free of duty an excessive exercise of power. **Re Smith-Bosanquet** [1940] 3 519, ChD.

Special power to appoint among children—

Appointment making appointees under doctrine of election bound to settle appointed shares—Validity. **Re Neave's Settlement Trusts** [1938] 3 220, ChD.

Exercise by will—

General power—

General and special powers of appointment conferred by settlement—Powers exercisable by deed or will—Testator devising and bequeathing all real and personal estate to future wife—Exercise of special power in will by appointing income of trust funds to future wife for life after testator's death—Residuary devise and bequest—General bequest of personalty operating as valid exercise of general power—Wills Act 1837, s 27. **Re Box's Settlement** [1945] 1 547, ChD.Power given by English settlement—Exercise by will of testator domiciled abroad—Blending of settled funds with testator's free personalty—Whether settled funds subjected to restrictions on testamentary disposition imposed by testator's domiciliary law. **Re Khan's Settlement** [1966] 1 160, ChD.Power given by English settlement—Residuary gift by will of testatrix domiciled abroad—Wills Act 1837, s 27. **Re Waite's Settlement Trusts** [1957] 1 629, ChD.Power to appoint 'in such manner ... expressly referring to this power as though it were a special power'—Whether a disposition 'including any property over which I may have any general power of appointment' a valid appointment. **Re Priestley's Will Trusts** [1971] 2 817, CA.Power to appoint on 'trust for such persons or person not being her husband' as daughter should appoint—Purported exercise of power by spinster daughter in favour of charity—Validity. **Re Harvey (decd)** [1950] 1 491, ChD.Residuary bequest—Express exercise by will of general powers arising under two different settlements—Will silent as to powers arising under third settlement—Whether contrary intention appeared by the will—Wills Act 1837, s 27. **Re Thirlwell's Will Trusts** [1957] 3 465, ChD.

Special power—

Expression of intention to exercise—Gift, subject to payment of debts, of 'all my real and personal estate whatsoever and wheresoever and over which I shall have any disposing power at the time of my decease'—Gift to objects of the special power—'And'—Failure to use 'appoint'. **Re Welford's Will Trusts** [1946] 1 23, ChD.Expression of intention to exercise—'I give devise and appoint all my property'—Non-objects of power named as substitutional beneficiaries. **Re Latta's Settlement** [1949] 1 665, ChD.Expression of intention to exercise—Reference to property—Donee also possessing property of same description. **Re Waldron's Settlement** [1940] 3 442, ChD.Expression of intention to exercise—Whether intention to exercise special powers expressed in will. **Re Holdford's Settlement** [1944] 2 462, ChD.Gift subject to payments of debts of 'all the residue ... including any property over which I may have any power of disposition at the date of my death' to objects of power—Whether special power exercised by will. **Re Knight (decd)**, **Re Wynn (decd)** [1957] 2 252, CA.Objects—Testamentary power of appointment amongst children or remoter issue conferred in 1902—Son of donee of power adopted two children in 1950, then being childless—Exercise of power in favour of grandchildren of donee of power by will made in 1951—Donee of power died in October 1957—Child born to donee's son by his second wife in March 1958—Whether adopted grandchildren benefited under exercise of power—Whether exercise of power was a disposition within Adoption Act 1950, s 13(2). **Re Brinkley's Will Trusts** [1967] 3 805, ChD.Personalty—Whether special power exercisable by nuncupative will, made by soldier on active service and admitted to probate—Wills Act 1837, ss 9, 10, 11, 27—Wills (Soldiers and Sailors) Act 1918, s 3(1). **Re Earl of Chichester's Will Trusts** [1946] 1 722, ChD.Power given by English will—Exercise in Scottish will—Relevant law. **Re McMorran (decd)** [1958] 1 186, ChD.Residuary gift—Direction to pay debts out of residue—'Appoint'—Estate and effects of which I shall have power to dispose at my decease'. **Re Beresford's Will Trusts** [1938] 3 566, ChD.Succession duty. *See Succession duty* (Incidence—Exercise by will of special power of appointment).

Exercise of power—

Bare power—

Extent of interest to pass under power—Gift of residue to testatrix' brother and sister for their lives and at their deaths to go to charities which they may have selected—No intention to establish endowment—Whether power to appoint capital—Whether power exercisable by survivor of donees. **Re Beesty's Will Trusts** [1964] 3 82, ChD.

Life interest with power to resort to capital—

Power to convert to own use—Gift over—Declaration of conversion. **Re Shuker's Estate** [1937] 3 25, ChD.

POWER OF APPOINTMENT (cont)

Exercise of power (cont)—

Requisites of valid exercise—

Range of objects of power irrelevant—Same rule applicable to general, special and hybrid powers—Compliance with requirements of power—Sufficient indication of intention to exercise power—Bequest of income from estate to testator's wife and after her death to such person or persons not connected with her by marriage as she should by will or codicil appoint—Bequest by wife of 'all my estate ... over which I shall then have power of appointment or disposition' to friend—Whether sufficient intention to exercise power. **Re Lawrence's Will Trusts** [1971] 3 433, ChD.

Special power—

Construction—Appointment offending rule against perpetuities—Clause containing saving words—Beneficiaries extending beyond lives in being—Whether saving words effective to validate gift clause. **Inland Revenue Comrs v Williams** [1969] 3 614, ChD.

Power to tenant for life to appoint to issue—As well the capital as the income ... with such future or other trusts ... and such provisions for their respective advancement ... at the discretion of ... my trustees as the tenant for life should appoint—Whether by exercise of power trustees could be authorised to advance to issue. **Re Bainbridge (decd)** [1948] 2 657, ChD.

Power to will trustees to appoint by way of settlement for benefit of testator's son his wife and children or remoter issue or for benefit of any such objects and with such ulterior or ultimate trusts as trustees should think fit—Meaning of 'ulterior or ultimate trusts'—Whether delegation of testator's power to make a will—Validity. **Re Abrahams' Will Trusts** [1967] 2 1175, ChD.

Trusts arising—Advancement. *See* **Trust and trustee** (Powers of trustee—Advancement—Trusts arising on exercise of special power of appointment).

Validity—

Settlement—Discretionary trusts in favour of specified class of beneficiaries—Power to appoint that capital should be held on trust for any one of specified class—Specified class including settlor's wife or widow—Appointment of capital to be held on settlement trusts subject to the exclusion of settlor's wife or widow from specified class—Validity of appointment. **Blausten v Inland Revenue Comrs** [1972] 1 41, CA.

Extinction. *See* **Variation of trusts** (Extinction of power of appointment).

Extinguishment of power of appointment. *See* **Variation of trusts** (Power of appointment—Extinguishment of power).

Failure to exercise—

Power of appointment by deed or will—

Trust implied in favour of objects of power—Class benefiting—Construction. **Re Arnold's Trusts** [1946] 2 579, ChD.

Fiduciary relationship between donee and objects. *See* **Release**—Release as regards one particular object—Whether fiduciary relationship between donee and objects, *post*.

Fraud on a power—

Antecedent agreement to benefit non-objects—

Power to appoint in favour of one object only—Necessity for proof of antecedent agreement with appointee to benefit stranger. **Re Nicholson's Settlement** [1938] 3 532, CA.

Corrupt purpose—

Purchase of appointee's interest by appointor—Appointor and appointee in relationship of parent and child—In absence of intention by appointor to benefit himself or non-object, appointment by parent to child not invalidated merely because parent purchases child's interest. **Re Merton's Settlement** [1953] 2 707, ChD.

Effect of fraud on a power—

Exercise of special power in favour of two appointees—Severance—Subsequent appointment to same appointees—Freedom from taint of second appointment—Onus of proof. **Re Chadwick's Trusts** [1939] 1 850, ChD.

Exercise to further some purpose other than benefit of object—

Special power of appointment among children and remoter issue—Power, contained in appointor's marriage settlement, exercised by will in favour of appointor's surviving children—Condition directing forfeiture of appointee's share of appointor's residuary trust funds unless appointee's share under settlement settled as directed. **Re Simpson's Marriage Settlement** [1952] 1 963, ChD.

Foreign purpose—

Intention to benefit non-object—Absence of moral suasion. **Re Dick (decd)** [1953] 1 559, CA.

Special power of appointment among nephews and nieces—

Power exercised in favour of a nephew—Agreement by appointee to benefit appointor's children. **Re Crawshaw** [1948] 1 107, CA.

Variation of trust by the court. *See* **Variation of trusts** (Power of appointment—Fraud on power).

General power—

Exercise by will—

Foreign will. *See* **Conflict of laws** (Power of appointment—General power—Exercise of power—Foreign will).

Exercise by will. *See* **Exercise by will**—General power, *ante*.

Implied trust for objects—

No gift over in default of appointment—

Implication of gift to members of class—Power in nature of a trust. **Re Perowne (decd)** [1951] 2 201, ChD.

Intermediate power. *See* **Settlement** (Power—Intermediate power).

Joint power. *See* **Special power**—Joint power, *post*.

Omission of words—

Gift in default of appointment. *See* **Will** (Construction—Intention of testator—Words of will showing omission of words of power of appointment and gift in default of appointment).

POWER OF APPOINTMENT (cont)

Perpetuity—

Excessive execution of power. *See* Excessive execution—Appointment of absolute interest with gift over—Gift over infringing perpetuity rule, *ante*.

Exercise of power. *See* Exercise of power—Special power—Construction—Appointment offending rule against perpetuities, *ante*.

Release—

Power coupled with a duty or trust—

Factors affecting determination whether power was coupled with trust—Beneficial or vicarious powers—Trust deeds establishing school contained special power to revoke and re-appoint trusts and discretionary powers—Appointment amongst such of founder's issue as trustees of founder's will should appoint—Whether power was capable of release by trustees of founder's will. **Re Will's Trust Deeds** [1963] 1 390, ChD.

Power to capitalise income—

Exercise of power (conferred by a subsequent clause) to declare new trusts excluding power to capitalise income—No other material difference in new trusts—Whether exercise of power was valid. **Muir v Inland Revenue Comrs** [1966] 3 38, CA.

Release as regards one particular object—

Whether fiduciary relationship between donee and objects—Whether distinction between release and covenant not to exercise power. **Re Brown's Settlement** [1939] 3 391, ChD.

Revocation—

Power of appointment by deed or will—

Power exercised by will—Subsequent exercise by deed—No revocation of deed before death—Whether exercise of power by deed or will operative. **Re Butler's Settlement Trust** [1942] 2 191, ChD.

Power to revoke appointment—

Exercise not by deed—No power of revocation reserved—Power to select charities as beneficiaries in residuary estate of testatrix—Power to joint donees and survivor—Whether joint appointment revocable by survivor. **Re Beesty's Will Trusts** [1964] 3 82, ChD.

Special power of appointment—

Fraudulent exercise—Special power to appoint among children and issue—Appointor having life interest in income of trust fund—Revocable appointment to children and grandchildren—Revocation with intent to further scheme for distribution of part of capital of trust fund between appointor and adult children. **Re Greaves' Will Trusts** [1954] 1 771, CA.

Property subject to power to be divided equally amongst objects of power in default of appointment—Exercise of power by deed containing power of revocation—Subsequent release and discharge of power—No reference in release to previous appointment—Whether release effectual to revoke appointment. **Re Chatterton's Settlement** [1946] 2 211, ChD.

Rule against perpetuities. *See* Rule against perpetuities (Power of appointment).

Scottish will—

Exercise in Scottish will of power given by English will. *See* Exercise by will—Special power—Power given by English will—Exercise in Scottish will, *ante*.

Soldier on active service—

Whether special power exercisable by nuncupative will. *See* Exercise by will—Special power—Personalty—Whether special power exercisable by nuncupative will, made by soldier on active service and admitted to probate, *ante*.

Special power—

Appointment—

Validity—Marriage settlement dated before 1926—Power exercised by deed dated after 1926—Trusts created by an instrument coming into operation after the commencement of the Law of Property Act 1925—Law of Property Act 1925, s 161(2). **Re Leigh's Marriage Settlement** [1952] 2 57, ChD.

Exercise by will—

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Irrevocable appointment by deed—Subsequent dissolution of marriage—Whether deed effective to confer life interest on former wife. **Re Slaughter's Estate** [1945] 2 214, ChD.

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Power exercised by irrevocable deed—Marriage dissolved on wife's petition—Death of appointor—Whether appointment effective. **Re Allan (decd)** [1954] 1 646, CA.

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Mortgagee's claim for possession—Arrears of instalments paid, but mortgagor unable to repay loan within reasonable period—RSC Ord 55, r 5A. **Robertson v Cilia** [1956] 3 651, ChD.

Mortgagee's claim for possession—Principal sum not repayable by instalments. **Braithwaite v Winwood** [1960] 3 642, ChD.

Mortgagee's claim for possession—Principal sum repayable by instalments. **Birmingham Citizens Permanent Building Society v Caunt** [1962] 1 163, ChD.

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Appearance by post by defendants personally or by defendants' solicitors—London writs—District registry writs—Rules of the Supreme Court (No 1) 1960 (SI 1960 No 545). **Practice Note** [1960] 2 109, QBD.

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Application for leave to enter judgment in default—Judgment entered notwithstanding defendant's appearance at hearing of application. **Redditch Benefit Building Society v Roberts** [1940] 1 342, CA.

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Application for authority to enter appearance on behalf of another person *sui juris*—Whether court having power to grant application. **Llewellyn v Carrickford** [1970] 2 24, ChD.

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Application to master for adjournment—Time limit—Applications after order pronounced but before order perfected. **Practice Direction** [1975] 1 232, ChD.

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Master's order passed and entered—Motion to judge to set aside order—Whether judge having jurisdiction to set aside order when perfected. **Whiteoaks Clifton Property Services Ltd v Jackson** [1975] 2 85, ChD.

Right to adjournment—Plaintiffs' solicitor declined master's invitation to adjourn matter to judge—Before order passed and entered plaintiffs applied for adjournment—Master then adjourned matter to judge—Whether plaintiffs had lost their right to such adjournment.

London Permanent Benefit Building Society v De Baer [1968] 1 372, ChD.

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Communication by post or telephone—

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Orders which may be made by Chancery masters—RSC Ord 32, r 14. **Practice Directions** [1970] 1 1183, ChD, [1971] 2 215, ChD, [1975] 1 255, ChD, [1975] 1 640, ChD, [1976] 2 610, ChD.

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Chambers applications—Hearing before judge in chambers—Sittings in chambers outside London wherever High Court sittings held—Issue of notice of appeal or summons in district registry—Applications for bail. **Practice Note** [1976] 1 736, QBD.

Lists—Application to judge in chambers estimated to last more than 30 minutes—Special appointment. **Practice Direction** [1965] 2 28, QBD.

Lists—Applications to judge in chambers to be published in daily cause list—Duration of hearing to be estimated and indorsed on filed copy—Special appointment for applications estimated to last more than 45 minutes. **Practice Direction** [1959] 3 97, QBD.

Report of proceedings—Power of court to prohibit publication of information relating to proceedings—Applications to strike out action and for judgment in default of defence—Order granting applications—Power to prohibit publication of report of proceedings—Administration of Justice Act 1960, s 12(1)(e)(2). **Wallersteiner v Moir** [1974] 3 217, CA.

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Affidavit sworn before proceedings commenced—Acceptance. **Practice Direction** [1969] 2 639, ChD.

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Cross-examination of deponent—Further proceedings between parties pending in foreign court. *See* **Interlocutory proceedings**—Cross-examination on affidavit—Further proceedings between parties pending in foreign court.

Cross-examination of deponent—Order for cross-examination—Procedure—RSC Ord 38, r 2(3). **Practice Direction** [1969] 2 736, ChD.

Cross-examination of deponent—Service of notice—Deponent out of jurisdiction—RSC Ord 38, r 28. **Re Lucas (decd)** [1952] 1 102, ChD.

Dates and sums of money to be in figures and not in words—Infringement of practice direction—Authority to masters to order affidavit to be taken off file on preliminary hearing—Costs of re-swearing and re-filing to be borne by solicitor. **Love v Pharaoh** [1954] 1 120, ChD.

Office copies—Ex parte applications without summons—Mortgages—Orders nisi for foreclosure or redemption. **Practice Directions** [1954] 3 364, ChD, [1955] 1 30, ChD.

Office copies—No longer required—Exceptions. **Practice Direction** [1969] 2 639, ChD.

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Order requiring execution of deed—Judgment in default of appearance—Form of order—Specific performance of agreement to execute lease—Judgment against lessor—Minutes of order providing that defendant execute lease containing 'the usual covenants' in form of a draft annexed—Defendant's right to object to proposed terms of lease even though in default of appearance—Appropriate order that defendant execute lease to be settled by judge if parties fail to agree—RSC Ord 44, r 8. *Charalambous v Ktori* [1972] 3 701, ChD.

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Applications in regard to actions in witness list, Parts 1 and 2. **Practice Direction** [1966] 2 720, ChD.

Date of appearance in list—Date of hearing—Alteration of date—Notification of settlement of action. **Practice Direction** [1954] 1 946, ChD.

Estimate of expected duration—Necessity for realistic and reliable forecasts. **Practice Note** [1970] 1 904, ChD.

Estimate of expected duration—Revision of estimate—Revision in light of supervening circumstances. *Forspan v Altmann* [1968] 2 760, ChD.

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Civil proceedings and non-contentious business—

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Order in Tomlin form—Court not prepared to sanction undertaking to court—Order made more than 30 years previously—Whether undertaking enforceable by injunction. **Wilson & Whitworth Ltd v Express & Independent Newspapers Ltd** [1969] 1 294, ChD.Order in Tomlin form—Function of court—Interpleader proceedings—Terms agreed by counsel—Order within jurisdiction of court—Court under no duty to approve or disapprove agreed order—Court having no right to refuse to make agreed order. **Noel v Becker** [1971] 2 1186, CA.

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Foreign plaintiff wishing to conduct proceedings through interpreter—Discretion of court. **Re Trepcia Mines Ltd** [1960] 3 304, CA.

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Separate libels contained in one book—Probable embarrassment at trial—Difficulty of apportioning costs—RSC Ord 49, r 8. **Marchant v Ford** [1936] 3 104, CA.

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Co-defendant's right in Chancery Division—Construction summons involving also disputed questions of fact—Witness's affidavit evidence, filed on behalf of trustees, favourable to first defendant—Other defendants cross-examining witness—Whether first defendant entitled to cross-examine witness in order to strengthen witness's evidence in his favour. *Re Baden's Deed Trusts* [1967] 3 159, ChD.Refusal of right—Substantial wrong or miscarriage of justice occasioned—Possibility of effect on decision—Matrimonial Causes Rules 1957 (S I 1957 No 619), r 73(7)—RSC Ord 59, r 11(2). *Blaise v Blaise* [1969] 2 1032, CA.

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Right not personal to judge—Subsequent interlocutory reference to official referee to report on one matter in issue—Jurisdiction of official referee to order defendant to appear before him for cross-examination—RSC Ord 36A, r 7(1)(a). *Fallon v Calvert* [1960] 1 281, CA.

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Personal injury to infant plaintiff—No defence on liability—Defendants paid £500 into court—No prejudice to defendants—Action not to be dismissed. **Marlton v Lee-Leviten** [1968] 2 874, CA.

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PRACTICE (cont)Ecclesiastical courts. *See* **Ecclesiastical law**.Estate duty. *See* **Estate duty** (Practice).

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Interlocutory motion—Ex parte application—Documents and property on premises controlled by respondent—Order requiring respondent to permit applicants to enter premises for purpose of inspection etc—Circumstances in which order will be made ex parte—Danger that in default of an order applicants might be deprived of a remedy in the action—Danger that if notice of motion given documents and property might be destroyed—Action for infringement of copyright—Order requiring defendant to permit plaintiffs to enter defendant's premises for purposes of inspection, photographing of documents and property and removal of infringing copies—RSC Ord 29, r 2. **EMI Ltd v Pandit** [1975] 1 418, ChD.

Interlocutory motion—Ex parte application—Articles on premises controlled by respondent—Order requiring respondent to deliver up infringing articles for custody until trial of action—Action for infringement of copyright—Danger that infringing articles might disappear if respondent given notice—Preservation of respondent's rights—Circumstances in which ex parte order should be granted. **Universal City Studios Inc v Mukhtar & Sons** [1976] 2 330, ChD. destroyed or taken out of the jurisdiction—Action&

Interlocutory motion—Ex parte application—Documents on premises controlled by respondents—Orders requiring respondents to permit applicants to enter premises for purpose of inspection etc—Circumstances in which order will be made ex parte—Nature of order—Danger that in default of order applicants might be deprived of a remedy in the action—Danger that if notice of motion given documents might be destroyed or taken out of the jurisdiction—Action for infringement of copyright—Order requiring respondents to permit applicants to enter respondents' premises for purposes of inspection and removal of documents. **Anton Piller K G v Manufacturing Processes Ltd** [1976] 1 779, CA.

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Reciprocal action by other party—Contents of report. *Devine v British Transport Commission* [1954] 1 1025, QBD.

Trial of case on agreed medical report—When order for case to be so tried is proper. *Proctor v Peebles (Papermakers) Ltd* [1941] 2 80, CA.

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Power to stand motion over until trial—

Evidence filed by defendants—Conflict of fact—Whether motion for injunction should be stood over to trial. **Pictograph Ltd v Lee-Smith Photomechanics Ltd** [1964] 1 668, ChD.

Evidence filed on affidavits—Substantial dispute of fact—Facts incapable of being sufficiently determined on affidavit evidence—Whether court having power to stand motion over until trial. **Société Française d'Applications Commerciales et Industrielles SARL v Electronic Concepts Ltd** [1975] 3 425, ChD.

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Money taken out of court—Whether plaintiff can appeal on quantum of damages. **Mills v Duckworth** [1938] 1 318, CA.

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Appeal against rejection of submission—Evidence to be considered on appeal where defendant elected to adduce evidence after rejection of submission—Appeal decided on whole evidence. **Payne v Harrison** [1961] 2 873, CA.

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Defamation action—Words complained of not actionable without proof of special damage—No special damage alleged or proved—Whether judge's ruling necessary immediately after submission. **Cleghorn v Sadler** [1945] 1 544, KBD.

Judge not bound to rule until conclusion of evidence—Whether judge has discretion to put defendant to election whether to call evidence or to stand on his submission. **Payne v Harrison** [1961] 2 873, CA.

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Action for damages for negligence or breach of statutory duty—Superintendent of factory nominated by government as defendant—Jurisdiction of court to hear case against nominal defendant. **Royster v Cavey** [1946] 2 642, CA.

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Minutes of order drawn by counsel—Consent orders—Chancery Division. **Practice Direction** [1960] 3 416, ChD.

PRACTICE (cont)**Order (cont)—****Drawing-up (cont)—**

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Crown Office and Associates' Department. **Practice Direction** [1964] 2 955, QBD.

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Proceeding by next friend—Party said to be 'of unsound mind, not so found by inquisition'—Reasonable ground for thinking party capable of managing affairs—Dismissal of proceeding. **J (or se B) (by her next friend) v J** [1952] 2 1129, Div.

Adding defendant—

Action to restrain infringement of trade mark—Alleged contract between plaintiffs and third party permitting user of trade mark by third party—Third party employed by defendants—Defendants applying for order to join third party as additional defendant—RSC Ord 16, r 11. **Bentley Motors (1931) Ltd v Lagonda Ltd** [1945] 2 211, ChD.

Amendment of writ—Adding or substituting party as defendant—Amendment of writ to change defendant from H E Co (Leeds) Ltd to H E Co Ltd—Limitation period expired—Whether rule of court permitting amendment was ultra vires—Whether leave to amend was just—Supreme Court of Judicature (Consolidation) Act 1925, s 99(1)(a)—RSC Ord 20, r 5(2)(3). **Mitchell v Harris Engineering Co Ltd** [1967] 2 682, CA.

Amendment of writ—Amendment to change defendant 'E B (a firm)' to 'E B Ltd'—Whether a correction of a mere misnomer—Amendment sought after limitation period expired. **Davies v Elsby Brothers Ltd** [1960] 3 672, CA.

Amendment of writ—Date from which added defendant becomes party to proceedings—Writ amended at central office on day with which limitation period expired—Service on added defendants effected subsequently—Action not statute-barred—Amendment effective on day when writ stamped as amended—RSC, Ord 15, r 6(2)(b), r 8(2)(4). **Seabridge v H Cox & Sons (Plant Hire) Ltd, Barclay v Same** [1968] 1 570, CA.

Defendants applying for order that plaintiffs should add further defendants—Proposed new parties unnecessary for determination of issues pleaded but intended to become plaintiffs on counterclaim—RSC Ord 16, r 11. **Atid Navigation Co Ltd v Fairplay Towage & Shipping Co Ltd** [1955] 1 698, ChD.

Defendants applying for order to join another defendant—Prima facie case that proposed defendant's rights might be legally affected by the result of the action—RSC Ord 16, r 11. **Amon v Raphael Tuck & Sons Ltd** [1956] 1 273, QBD.

Foreign government—Applicants not asserting title to property, but claiming possession or control through bank as bailee—Invocation of doctrine of immunity of foreign sovereign States—Applicants not necessary parties at commencement of action—Action against Bank of England for delivery up of gold bars deposited with bank by governments of United Kingdom, United States of America, and France—Application by governments of United States and France to be added as defendants—RSC Ord 16, r 11. **Dollfus Mieg et Compagnie SA v Bank of England** [1950] 2 605, ChD.

Personal representatives—Action by testator's former wife—Former wife claiming as beneficiary of estate under maintenance order—Claim against testator's employers for payment of sums due under insurance policies into estate—Personal representatives unwilling to sue—Addition of personal representatives as formal defendants—Beneficiary as plaintiff—Special circumstances justifying form of action. **Field v Firmenich & Co** [1971] 1 1104, ChD.

Third party—Third party intending to dispute basis of plaintiff's claim and to counterclaim—Whether jurisdiction to join third party as co-defendant—RSC Ord 16, r 11. **Miguel Sanchez & Compania SL v Owners of Result (Nello Simoni Ltd third party), The Result** [1958] 1 839, Adm.

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Consent to joinder—Necessary party—Whether consent necessary. **Re Vandervell Trusts** [1969] 3 496, CA.

Consent to joinder—Unwilling party—Costs. **Re Vandervell Trusts** [1969] 3 496, CA.

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Jurisdiction—Addition of person with only a commercial interest in subject-matter of proceedings—No power to add person having no legal interest in subject-matter—RSC Ord 16, r 11. **Re I G Farbenindustrie AG Agreement** [1943] 2 525, CA.

Motor Insurers' Bureau—Action by insurers to avoid third party policy—Notice to third party—Motor Insurers' Bureau liable to satisfy judgment obtained by third party if that judgment not satisfied by insured or insurers—Liability arising under contract with Minister of Transport to which third party not privy—Whether bureau entitled to be joined in insurers' action—Road Traffic Act 1960, s 207(3)—RSC Ord 15, r 6(2)(b). **Fire, Auto and Marine Insurance Co Ltd v Greene** [1964] 2 761, QBD.

Motor Insurers' Bureau—Action by pedestrian against motor cyclist—Defendant insured but insurance company unknown—Defendant unable to be traced—Whether Motor Insurers' Bureau should be added as a party—RSC Ord 15, r 6(2)(b). **Gurtner v Circuit** [1968] 1 328, CA.

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Parties (cont)—

Adding persons as parties (cont)—

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Necessary party—Inland Revenue Commissioners—Whether presence necessary to effectual and complete determination of matters—RSC Ord 15, r 6(2)(b). **Vandervell Trustees Ltd v White** [1970] 3 16, HL.

Necessary party—Party whose presence necessary to ensure all matters in dispute effectually and completely determined—RSC Ord 15, r 6(2)(b). **Settlement Corp v Hochschild (No 2)** [1970] 1 60, ChD.

Application for declaration—

Locus standi of applicant. *See* **Declaration** (Jurisdiction—Locus standi of applicant).

Application to Court of Protection under Mental Health Act 1959, s 103. *See* **Mental health** (Patient's property—Settlement—Application to court for order etc).

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Proceedings relating to charities. *See* **Parties—Proceedings relating to charities—Attorney-General, post.**

Capacity—

Local authority—Proceedings for statutory nuisance instituted before authorising resolution—Ratification by resolution 3 days later—Validity—Public Health Act 1936, s 100. **Warwick Rural District Council v Miller-Mead** [1962] 1 212, CA.

Change of parties—

Application for order to carry on proceedings—Jurisdiction to grant leave after judgment at the trial—RSC Ord 17, r 4. **Re Tate's Will Trusts** [1959] 2 450, ChD.

Charity—

Attorney-General. *See* **Parties—Proceedings relating to charities—Attorney-General, post.**

Co-plaintiffs—

Striking out one plaintiff and adding that party as defendant—Copyright—Infringement—Licensees commencing infringement action and joining owners of copyright as co-plaintiffs—Copyright owners withdrawing retainer of solicitors for the co-plaintiffs and applying to be struck out as co-plaintiffs and to be added as defendants—Whether and on what terms order should be made—Copyright Act 1956, s 19(3)—RSC Ord 16, r 11. **Warwick Film Productions Ltd v Eisinger** [1963] 2 892, ChD.

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Corporate body. **Practice Direction** [1969] 2 1130.

Doubt as to sex or description—Appropriate description in title of writ and memorandum of appearance. **Practice Direction** [1969] 2 1130.

Female plaintiff or defendant—Use of term 'feme sole'. **Ross v Collins** [1964] 1 861, CA.

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Divorce proceedings. *See* **Divorce** (Parties).

Intervention by persons not parties—

Attorney-General—Intervention in private suit—Rights. **Adams v Adams (Attorney-General intervening)** [1970] 3 572, Div.

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Consent to joinder—Whether consent of all parties necessary. **Vandervell Trustees Ltd v White** [1970] 3 16, HL.

Crown—Joinder as party—Hypothetical question—Possible liability to estate duty. **Re Barnato (dec'd)** [1949] 1 515, CA.

Ecclesiastical law—Petition for faculty. *See* **Ecclesiastical law** (Faculty—Petition—Locus standi—Parties entitled to be joined as petitioners).

Joinder of plaintiffs—Common questions of law or fact—One party Crown claiming bona vacantia—Judicial discretion—RSC Ord 16, r 1. **Banque des Marchands de Moscou (Koupetschesky) and Attorney-General v Midland Bank Ltd** [1939] 2 364, CA.

Joinder of plaintiffs—Transaction or series of transactions—Action for interference with light—RSC Ord 16, r 1. **Bendir v Anson** [1936] 2 326, CA.

Joint contractors—One joint contractor suing alone—Other joint contractor unwilling to sue—No offer of indemnity for costs made by plaintiff to his joint contractor—Joint contractor did not object to being added as defendant, but defendants objected—Absence of offer by Plaintiff of indemnity for costs to his joint contractor did not constitute a ground on which defendants could maintain their objection. **Burnside v Harrison Marks Productions Ltd** [1968] 2 286, CA.

Party whose presence necessary to ensure all matters in dispute effectually and completely determined—Action seeking execution of trusts of will of testator dying domiciled in India—Beneficiaries seeking to prevent transmission of proceeds of redemption of savings bonds out of jurisdiction—Moneys to be used for payment of Indian estate duty—Application by Union of India to be joined as defendant—Whether a necessary party—RSC Ord 15, r 6. **Re Lord Cable (deceased)** [1976] 3 417, ChD.

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Proceedings in which court giving guidance to solicitors in performance of their duties. **Pearson v Pearson (Queen's Proctor showing cause)** [1969] 3 323, Div.

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Parties (cont)—

Local authority—

Assertion and protection of rights of public—Whether bound to sue on relation of Attorney-General—Highways Act 1959, s 116(2)(5). **Hampshire County Council v Shonleigh Nominees Ltd** [1970] 2 144, ChD.

Condition precedent—Statutory nuisance—Proceedings in High Court instituted before resolution that remedy by summary proceedings inadequate—Resolution passed 3 days later—Whether action properly instituted—Public Health Act 1936, s 100. **Warwick Rural District Council v Miller-Mead** [1962] 1 212, CA.

Promotion or protection of interests of inhabitants of their area—Whether bound to sue on relation of Attorney-General—Public nuisance—Local Government Act 1933, s 276. **Prestatyn Urban District Council v Prestatyn Raceway Ltd** [1969] 3 1573, ChD.

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Sufficiency of interest. *See* **Mandamus** (applicant).

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Amendment—Plaintiffs a French trading firm—Wrongly described as corporate body—Addition of names of members of firm—RSC Ord 16, r 2, Ord 72, r 2. **Etablissement Baudelot v R S Graham & Co Ltd** [1953] 1 149, CA.

Name—

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Necessary parties—

Equitable assignment of part of debt—Assignor's action for whole debt—Whether assignee necessary party. **Walter & Sullivan Ltd v J Murphy & Sons Ltd** [1955] 1 843, CA.

Party acting in person—

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Plaintiffs—

Co-plaintiffs should be represented by same solicitor unless separate representation authorised. **Lewis v Daily Telegraph Ltd (No 2)** [1964] 1 705, CA.

Proceedings relating to charities—

Attorney-General—Appeal—Removal of trustee—Appeal against order of Charity Commissioners removing trustee—Charity Commissioners and Attorney-General made defendants—Attorney-General alone should be joined as defendant in first instance—RSC Ord 108, r 4(2). **Jones v The Charity Commissioners of England and Wales** [1972] 2 637, ChD.

Attorney-General—Attorney-General appropriate party on behalf of Sovereign in execution of duty to protect property given to charity. **Re Belling (decd)** [1967] 1 105, ChD.

Attorney-General—Substitution of Attorney-General as party to proceedings brought by local authority. *See* **Parties**—Substitution—Charity—Attorney-General—Local charity—Action by local inhabitants, *post*.

Charity Commissioners—Attorney-General—Whether Charity Commissioners or Attorney-General necessary parties. **Neville Estates Ltd v Madden** [1961] 3 769, ChD.

Local authority—Local authority not appropriate body to protect property given to charity. **Re Belling (decd)** [1967] 1 105, ChD.

Rectification proceedings. *See* **Deed** (Rectification—Parties to proceedings).

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Consistory court. *See* **Ecclesiastical law** (Consistory court—Representation of parties).

Representation of deceased person interested in proceedings. *See* **Representation of deceased person interested in proceedings, post**.

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Representation order—Members' club—Action in tort—Claim for damages by servant of club for injury on club premises—Assistant honorary secretary and chairman of house committee made defendants—Order authorising them to defend action in representative capacity—RSC Ord 16, r 9. **Campbell v Thompson** [1953] 1 831, QBD.

Representation order—Unincorporated association—Fluctuating membership—Action for goods supplied—RSC Ord 16, r 9. **Barker v Allanson** [1937] 1 75, CA.

Substitution of party. *See* **Parties**—Substitution—Representative action, *post*.

Suit on behalf of wine producers of Champagne district of France. **J Bollinger v Costa Brava Wine Co Ltd (No 2)** [1961] 1 561, ChD.

Suit on behalf of numerous persons having same interest—Tenants of council houses—Proposed to increase rents of some tenants—Whether four council tenants to be allowed to sue in representative capacity on behalf of all other council tenants—RSC Ord 16, r 9. **Smith v Cardiff Corpn** [1953] 2 1373, CA.

Separate actions by different plaintiffs against same defendant—

Order that actions be listed and tried together—Effect—Whether there is jurisdiction to order unsuccessful plaintiff in one action to pay defendant's costs of both actions—RSC Ord 65, r 1. **John Fairfax & Sons Pty Ltd v E C de Witt & Co (Australia) Proprietary Ltd** [1957] 3 410, CA.

Striking out party—

Action instituted without proper authority—Ratification on behalf of plaintiff—Action in name of company without authority—Liquidation of company—Adoption of proceedings by liquidator. **Danish Mercantile Co Ltd v Beaumont** [1951] 1 925, CA.

Substitution—

Action against deceased person—Defendant dead at date of issue of writ—Substitution of executors—RSC Ord 2, r 1, Ord 15, r 6, Ord 20, r 5. **Dawson (Bradford) Ltd v Dove** [1971] 1 554, QBD.

Charity—Attorney-General—Local charity—Action by local inhabitants—Action for declaration that park held by local authority subject to charitable trust—Plaintiffs having no locus standi—Whether power to substitute Attorney-General as plaintiff—RSC Ord 15, r 6. **Hauxwell v Barton-upon-Humber Urban District Council** [1973] 2 1022, ChD.

Representative action—Substitution of party as plaintiff—Withdrawal of named plaintiff from action—Power to substitute one of unnamed parties as plaintiff—RSC Ord 15, r 6—RSC Ord 20, r 5(1). **Moon v Atherton** [1972] 3 145, CA.

PRACTICE (cont)

Parties (cont)—

Substitution (cont)—

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Substitution of plaintiff—Action begun in name of firm—Sole proprietor of firm dead—Substitution of proprietor's executrix as plaintiff—RSC Ord 16, r 2. **Alexander Mountain & Co v Rumere Ltd** [1948] 2 482, CA.

Winding-up of company—

Misfeasance action against director—Whether liquidator a necessary party. *See* **Company** (Winding-up—Director—Misfeasance—Misfeasance action by company in liquidation against director—Whether liquidator necessary as co-plaintiff).

Patent actions. *See* **Patent** (Practice).

Patent appeal tribunal—

Dates of sitting. *See* **Patent** (Appeal tribunal—Practice).

Payment into court—

Acceptance—

Acceptance in error—Mistaken interpretation of pleadings—Power of court to grant relief. **S Kaprow & Co Ltd v Maclelland & Co Ltd** [1948] 1 264, CA.

Effect—Counterclaim and set-off—Acceptance by plaintiff of sum paid in by defendant as 'enough to satisfy plaintiff's claim'—Whether defendant free to pursue counterclaim—RSC Ord 22, r 1. **A Martin French (a firm) v Kingswood Hill Ltd** [1960] 2 251, CA.

Withdrawal of acceptance—Procedure—RSC Ord 22, r 2(1)(2). **Derrick v Williams** [1939] 2 559, CA.

Admission of liability—

Admission inconsistent with pleadings—Defendant not precluded from disputing liability—Duty of parties to regularise proceedings—RSC Ord 22. **Bonitto v Fuerst Bros & Co Ltd** [1944] 1 91, HL.

Judgment should not be for less than amount paid in. **Harrison v Liverpool Corpn** [1943] 2 449, CA.

Withdrawal of admission—Defence subsequently amended by leave and admission of liability withdrawn—Money taken out by plaintiff—Defendant's right to withdraw notice admitting liability and to recover money paid in—RSC Ord 22, rr 3, 6. **Williams v Boag** [1940] 4 246, CA.

Consolidated actions. *See* Consolidation of actions—Payment into court, *ante*.

Costs—

Sum awarded greater than sum paid in—Leave to amend particulars of special damage at trial—Sum awarded in respect of matters pleaded before amendment less than sum paid in—Defendant entitled to costs after payment in. **Cheeseman v Bowaters United Kingdom Paper Mills Ltd** [1971] 3 513, CA.

Sum recovered no greater than sum paid in—Discretion as to costs after date of payment in—Award of costs to plaintiffs—Action for debt—Parties coming to agreement on amount of debt after issue of High Court writ—Defendants refusing to pay interest or costs on High Court scale—Defendants paying amount of debt into court—Plaintiffs subsequently obtaining judgment for interest and costs on High Court scale—Plaintiffs awarded costs after date of payment in. **Vehicle and General Insurance Co Ltd (in liquidation) v H & W Christie Ltd** [1976] 1 747, QBD.

Denial of liability—

Denial of liability in notice inconsistent with pleadings—Admissions of negligence and special damage in defence—RSC Ord 22, r 1. **Davies v Rustproof Metal Window Co Ltd** [1943] 1 248, CA.

Interest—

Payment to be made without regard to possible order for interest. **Jefford v Gee** [1970] 1 1202, CA.

Lodgment of money—

Money—Foreign currency—Payment into court without conversion into sterling—Jurisdiction of court to order that sum be placed in foreign currency deposit account—Treasury consent under exchange control regulations—Admiralty court—Proceeds of sale of ship—Sale for sum expressed in foreign currency—Circumstances in which court will order that proceeds of sale be paid into court and placed into deposit account without conversion—Administration of Justice Act 1965, s 4(1)—Supreme Court Funds Rules 1927 (S R & O 1927 No 1184), r 33(1). **The Halcyon the Great** [1975] 1 882, QBD.

Lump sum payment where several causes of action—

Discretion of court—Copyright—Damages for infringement and conversion—RSC Ord 22, r 1(1)(2). **Tallent v Coldwell and Tailor and Cutter Ltd** [1938] 2 107, ChD.

Discretion of court—Different classes of persons beneficially entitled—RSC Ord 22, r 1(1)(2). **Gears v Braley** [1940] 3 376, CA.

Discretion of court—Libel action—RSC Ord 82, r 4(1). **Pedley v Cambridge Newspapers Ltd** [1964] 2 794, CA.

Discretion of court—Three defendants sued severally—Damages for breach of confidence and infringement of copyright—RSC Ord 22, rr 1(2), 4. **Robertson v Aberdeen Journals Ltd** [1954] 2 767, ChD.

Payment in of lump sum—Apportionment—Salvage—RSC Ord 22, r 1(2). **The Bosworth** [1960] 1 146, Adm.

PRACTICE (cont)

Payment into court (cont)—

Non-disclosure of payment into court—

Application at trial for payment out—Application by plaintiff opposed by defendant—Application having effect of disclosing payment in—Application made by plaintiff after seeing prospects of success diminishing—Jurisdiction of judge to continue hearing following disclosure of payment in—Whether plaintiff entitled to make application at trial—Whether judge should order new trial following disclosure of payment in and refusal of plaintiff's application—RSC Ord 22, rr 5, 7. **Gaskins v The British Aluminium Co Ltd** [1976] 1 208, CA.

Communication to judge—Oral judgment giving damages—Disclosure of payment into court—Alteration of quantum of damages in formal judgment—Jurisdiction—RSC Ord 22, r 6. **Millensted v Grosvenor House (Park Lane) Ltd** [1937] 1 736, CA.

Non-disclosure on appeal as to quantum of damages. *See* **Court of Appeal** (Practice—Payment into court—Non-disclosure—Appeal as to quantum of damages).

Notice—

Several causes of action—Causes of action not specified—Landlord's action sufficient—RSC forfeiture for non-payment of rent and breach of covenant to pay rates, etc—Notice of payment in referring to Common Law Procedure Act 1852, s 212—Whether notice sufficient—RSC Ord 22, r 1(2). **Standard Pattern Co Ltd v Ivey** [1962] 1 452, ChD.

Order for—

Compromise of action—Procedure. *See* **Compromise of action—Approval of court—Terms of order approving settlement—Payment into court within specified period—Procedure, ante.**

Several causes of action—

Payment in of lump sum. *See* **Payment into court—Lump sum payment where several causes of action, ante.**

Two causes of action—

No apportionment. **Emcee Ltd v Sunday Pictorial Newspapers (1920) Ltd** [1939] 2 384, KBD.

Withdrawal of payment in—

Money not taken out within seven days—Application to vary amount paid in—Withdrawal of money paid in in whole or in part—Procedure—RSC Ord 22, rr 1, 2. **Cumper v Potthecary** [1941] 2 516, CA.

Payment out of court—

Administration of estates—

Payment out of court to creditors—Fund exceeding £1,000—No order for further consideration—Summons in chambers—Jurisdiction—RSC Ord 55, r 2(1). **Re Viscount Rothermere (decd)** [1948] 1 709, ChD.

Affidavit of no settlement—

Affidavit not longer required. **Practice Direction** [1958] 2 785, ChD.

Application—

Time for application—Application to take out money in court after final speeches, but before judgment—Indication by judge that he did not believe applicant's evidence—RSC Ord 22, r 3. **Millar v Building Contractors (Luton) Ltd** [1953] 2 339, QBD.

Claims under Fatal Accidents Acts etc—

Damages recovered by widow paid into court—Re-marriage—Right of widow to payment out—RSC Ord 22, r 14(9). **Taylor (formerly Ryan) v Cheltenham and Hereford Breweries Ltd** [1952] 1 1135, CA.

Damages recovered by widow paid into court—Transfer to county court—Whether widow entitled to payment out—County Courts Act 1934, s 164(2)(3). **Cross v Edey** [1958] 1 170, CA.

Widow and infant daughter's damages paid into court—Payment out to bank trustees on trusts of a deed containing wide investment clause—RSC Ord 22, r 14(2). **Woodley v Tersons Ltd** [1958] 3 305, QBD.

Payment to nominee—

Solicitors on behalf of client—Nominees of administrators—RSC Ord 55, r 2(1). **Woodhead v Bates** [1963] 2 877, ChD.

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Personal representatives—

Adding as defendants. *See* **Parties—Adding defendants—Personal representatives, ante.**

Persons under disability—

Minor—

Proceeding by next friend—Adoption of action on attaining majority—Title to subsequent proceedings. **Carberry v Davies** [1968] 2 817, CA.

Settlement of action—

Assizes—Settlement—After entry for trial and before coming in day's list—Party under disability. **Practice Direction** [1953] 2 1561, Assizes.

Petition—

Bankruptcy. *See* **Bankruptcy** (Petition).

Divorce. *See* **Divorce** (Petition).

Faculty for. *See* **Ecclesiastical law** (Faculty—Petition).

Judicial separation. *See* **Husband and wife** (Judicial separation—Form of petition).

Petition for relief under Companies Act 1948, s 210. *See* **Company** (Oppression—Petition—Practice).

Petition of appeal—

House of Lords. *See* **House of Lords** (Petition).

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Post—

County court. *See* **County court** (Postal transactions).

PRACTICE (cont)

Post (cont)—

Divorce registry—

Use of postal facilities. *See* **Divorce** (Practice—Postal facilities in divorce registry).

First and second class mail—

Affidavit of service—Endorsement of service on writ—Entry of appearance—Interpretation Act 1889, s 26—RSC Ord 10, r 1(4), Ord 12, r 4. **Practice Direction** [1968] 3 319.

Postal delay—

Period between service of notice of motion and hearing. **Practice Direction** [1969] 1 304, 432, ChD.

Service by post of notice of motion—Temporary delay in delivery of mail. **Practice Directions** [1969] 1 304, 432, ChD.

Time limited for entry of appearance—Entry of judgment in default of appearance—Temporary delay in delivery of mail—RSC Ord 12, r 5. **Practice Direction** [1969] 1 346.

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Notice to treat—Compulsory acquisition of land. *See* **Compulsory purchase** (Notice to treat—Service—Post).

Use of postal facilities—

Queen's Bench Division—Admiralty Registry—Modifications of usual practice—Posting of orders. **Practice Direction** [1976] 2 446, QBD.

Queen's Bench Division—Conditions to be complied with—Application by letter—Date of application—Rejection of application by post—Particular classes of business which may be dealt with by post. **Practice Direction** [1976] 2 312, QBD.

Queen's Bench Division—Admiralty Registry—Extension of use—Filing and lodgment of certain documents—Conditions to be complied with. **Practice Direction** [1976] 3 224, QBD.

Writ—

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Preliminary point of law—

Application for trial of preliminary issue on point of law—

Hypothetical facts—Unsuitability of procedure. **Windsor Refrigerator Co Ltd v Branch Nominees Ltd** [1961] 1 277, CA.

Libel action—Investigation of facts requisite first—Point of law of great uncertainty on the extent or existence of absolute privilege for communications by serving officers of friendly foreign powers in England—Unsuitability of question for determination as a preliminary point. **Richards v Naum** [1966] 3 812, CA.

Libel action—Issue whether words complained of capable of defamatory meaning—Whether suitable to be tried as preliminary issue—RSC Ord 25, r 2. **Morris v Sandess Universal Products** [1954] 1 47, CA.

Test whether preliminary issue should be ordered—Decisive of litigation if point of law decided one way—Action by East German company against West German company—Claim by East German company against solicitors acting for West German company in respect of money for fees and disbursement received by solicitors in good faith from West German company—Preliminary issue ordered. **Carl-Zeiss-Stiftung v Herbert Smith & Co (a firm)** [1968] 2 1002, CA.

Order for trial of preliminary point of law—

Terms of order—Necessity to define point of law—RSC Ord 25, r 2. **National Real Estate and Finance Co Ltd v Hassan** [1939] 2 154, CA.

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- Re-examination—
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- Reference to European Court. *See* **European Economic Community** (Reference to European Court—Practice).
- Reference to referee—
 - Claim based on conspiracy to defraud—
 - Some accounts involved—Supreme Court of Judicature (Consolidation) Act 1925, s 89. **Ullstrom v Naar** [1939] 1 164, CA.
 - Claim based on negligence of professional man—
 - Appeal from decision of official referee—Finality of official referee's decision of fact—Supreme Court of Judicature (Consolidation) Act 1925, s 89(b)—Administration of Justice Act 1932, s 1. **Charles Osenton & Co v Johnston** [1941] 2 245, HL.
- Inherent jurisdiction—
 - Court expert's report—Irrelevant matter expurged—RSC Ord 37A. **Audley Land Co Ltd v Kendall** [1955] 2 273, QBD.
- Inquiry and report—
 - Attendance of witness—Jurisdiction of referee to order attendance of defendant—Purpose of attendance being to enable defendant to be cross-examined—RSC Ord 36A, r 7(1)(a). **Fallon v Calvert** [1960] 1 281, CA.
- Order by district registrar—
 - Jurisdiction of registrar—Registrar assigning business to circuit judge as official referee—Registrar reserving interlocutory applications to himself—Registrar subsequently making orders in respect of interlocutory matters—Extent of registrar's jurisdiction—Courts Act 1971, s 25(4). **Durston v O'Keeffe** [1974] 2 1163, QBD.
- Power to order trial before official referee—
 - Exercise of power—Absence of appeal from referee on questions of fact—Pleadings raising allegations of importance to party—Trial before judge providing opportunity for Court of Appeal to review findings of fact—Party entitled to trial before judge. **Simplicity Products Co (a firm) v Domestic Installation Co Ltd** [1973] 2 619, CA.
- Procedure—
 - Hearing of first summons—Delivery of pleadings—Solicitors to be ready to state nature of claim and defence—Directions and orders by referee—Date for trial of action—Expert evidence. **Practice Direction** [1968] 2 1213.
- Report on reference—
 - Form of report—Landlord and Tenant Act 1927—Supreme Court of Judicature (Consolidation) Act 1925, s 88(2). **Freeman v Dartford Brewery Co Ltd** [1938] 3 120, KBD.
- Setting aside decision of referee—
 - Decision given by a judge on principle—Amount referred to referee—Application to set aside referee's decision—Jurisdiction of single judge—Supreme Court of Judicature (Consolidation) Act 1925, ss 88, 89, 90(2)—RSC Ord 59A, r 1. **Telsen Electric Co Ltd v J J Eastick & Sons (No 2)** [1938] 2 462, CA.
- Registered designs—
 - Actions and matters relating to. *See* **Design** (Practice—Motion—Actions and matters relating to registered designs).
- Relator action. *See* **Attorney-general** (Relator action).
- Remission of action for personal injuries to county court—
 - Grounds for exercise of discretion—
 - Action against two defendants—Probability of plaintiffs' success in action—County Courts Act 1919, s 2. **Fawcett v Johnson's Service Garage** [1939] 3 377, CA.
- Representative action—
 - Members club. *See* **Club** (Members club—Parties to action—Representation order).
- Representation of deceased person interested in proceedings—
 - Appointment of person to represent estate—
 - Joint tortfeasors—Contribution—No representative of deceased joint tortfeasor's estate—Power of court or judge to appoint representative—Law Reform (Married Women and Tortfeasors) Act 1935, s 6—RSC Ord 16, r 46. **Lean v Alston** [1947] 1 261, CA.
 - Necessity for consent—RSC Ord 16, r 46. **Pratt v London Passenger Transport Board** [1937] 1 473, CA.
- Representation of parties—
 - Local authority—
 - Treasury Solicitor. *See* **Local authority** (Representation by Treasury Solicitor).
- Representative proceedings—
 - Substitution of unnamed party as plaintiff. *See* **Parties**—Substitution—Representative action—Substitution of party as plaintiff—Withdrawal of named plaintiff from action, *ante*.
- Unincorporated body—
 - Proceedings to determine who were its lawfully elected officers—Writ issued by purported president claiming to represent all members—Division of opinion between plaintiff and the members—Community of interest in determination of issue—Whether representative action appropriate—RSC Ord 15, r 12. **John v Rees** [1969] 2 274, ChD.
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PRACTICE (cont)

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Application to restore company's name to register. *See* **Company** (Restoration to register—Application—Service of application).

Billeting notice. *See* **Billeting** (Billeting notice—Service).

Misfeasance summons—

Service on officer etc of company. *See* **Company** (Winding-up—Misfeasance summons—Service).

Notice of appeal—

Appeal against committal for contempt of court. *See* **Contempt of court** (Committal—Appeal against committal—Notice of appeal—Service).

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Notice of motion—

Appeal against committal by county court for contempt of court. *See* **Contempt of court** (Committal—Appeal against committal—Committal by county court—Motion for release pending appeal to Court of Appeal—Service of notice of motion).

Notice to treat—

Compulsory purchase. *See* **Compulsory purchase** (Notice to treat—Service).

Personal service—

Manner of effecting personal service—Defective copy of writ served—No division of High Court specified—No district registry specified—Whether the service was the 'proceeding'—Whether service of writ void—RSC Ord 2, r 1, Ord 5, r 3, Ord 70, r 1. **Smalley v Robey & Co Ltd** [1962] 1 133, CA.

Petition—

Divorce. *See* **Divorce** (Practice—Service—Petition).

Reply to defence—

Time for service of reply—Failure to deliver reply to defence—Master's discretion—Interlocutory and final appeals—Jurisdiction of Divisional Court. **Kronstein v Korda** [1937] 1 357, CA.

Service by post—

Need for process to reach person to be served—Notice of date fixed for hearing adjourned appeal. **R v Appeal Committee of County of London Quarter Sessions, ex parte Rossi** [1956] 1 670, CA.

Notice to treat—Compulsory purchase. *See* **Compulsory purchase** (Notice to treat—Service—Post).

Registered post—Notice of date of hearing—Letter returned undelivered—Right to have judgment set aside. **R v Appeal Committee of County of London Quarter Sessions, ex parte Rossi** [1956] 1 670, CA.

Service of document on company—

Validity of service by registered post. **T O Supplies (London) Ltd v Jerry Creighton Ltd** [1951] 2 992, KBD.

Service of writ on company. *See* **Writ** (Service on company).

Service out of the jurisdiction. *See* Service out of jurisdiction, *post*.

Subpoena ad testificandum. *See* subpoena ad testificandum—Service, *post*.

Substituted service—

Bankruptcy notice. *See* **Bankruptcy** (Bankruptcy notice—Service—Substituted service).

Bankruptcy petition. *See* **Bankruptcy** (Petition—Service—Substituted service).

Defendant a prisoner of war in Germany—Whether alien enemy—Enemy—Trading with the Enemy Act 1939, s 2—RSC Ord 9, r 14B. **Vandyke v Adams** [1942] 1 139, ChD.

Judgment summons—Arrears of maintenance, *for*. *See* **Divorce** (Practice—Service—Substituted service—Judgment summons).

Notice of writ—Court's discretion—Personal service 'impracticable'—Whether power to order substituted service where plaintiff unable to effect prompt personal service—RSC Ord 65, r 4(1). **Re Conan Doyle's Will Trusts** [1971] 2 1377, ChD.

Order for substituted service in running down action—Appeal by insurers in own name to have order set aside—Insurers no parties to action—Policy giving insurers control of proceedings—Whether insurers entitled to apply to have order set aside. **Murfin v Ashbridge and Martin** [1941] 1 231, CA.

Partnership with head office in enemy-occupied territory—Service on manager of London office—RSC Ord 48A, r 3. **Meyer v Louis Dreyfus et Cie** [1940] 4 157, CA.

Proposed action against alien in enemy-occupied country—Service by advertisement in newspaper published in neutral country and circulating in country where alien resides. **Re An Intended Action between V L Churchill & Co Ltd and Lonberg** [1941] 3 137, CA.

Service of concurrent writ out of jurisdiction—Misnomer of defendants—Conditional appearance—Summons to set aside order for service of writ, and all subsequent proceedings—Misnomer trivial—Validity of writ—Correct procedure to be adopted by defendants—RSC Ord 11, r 1—RSC Ord 12, r 30—RSC Ord 70, rr 1, 2, 3. **Alexander Korda Film Production Ltd v Columbia Pictures Corp Ltd** [1946] 2 424, ChD.

Substituted service within jurisdiction—Personal injury action arising out of road accident—Principles on which directed—Service on defendant c/o insurance company which had no authority from defendant—Defendant unable to be traced—Order for substituted service wrongly made. **Gurtner v Circuit** [1968] 1 328, CA.

Time for service of writ—

Note on form inconsistent with rules—Time for service of writ prescribed by rules inconsistent with note on writ—Rules prevail—RSC, Ord 6, r 1, r 8(1), App A, Forms 1, 2. **Trow v Ind Coope (West Midlands) Ltd** [1967] 2 900, CA.

Service of writ more than 12 months from date of issue—Unconditional appearance by defendants—Effect—Waiver of irregularity—RSC Ord 8, r 1, Ord 64, r 7. **Sheldon v Brown Bayley's Steelworks Ltd** [1953] 2 894, CA.

PRACTICE (cont)

Service (cont)—

Time for service of writ (cont)—

Writ against two defendants—First defendant served within 12 months of issue of writ—Whether service on second defendant after expiry of 12 months valid—RSC Ord 6, r 8. **Jones v Jones** [1970] 3 47, CA.

Writ—

Service on company—Service by post. *See* **Writ** (Service on company—Service by post).

Service on foreign company. *See* **Company** (Foreign company—Writ—Service of writ on foreign company).

Service out of the jurisdiction—

Action by trustee in bankruptcy—

Quasicontractual right—Recovery of money given by bankrupt to his children less than three months before date of presentation of petition in bankruptcy—RSC Ord 11, r 1(e). **Re An Intended Action, Trustee of Rousou (a bankrupt) v Rousou** [1955] 2 169, ChD, **Trustee of Rousou (a bankrupt) v Rousou** [1955] 3 486, ChD.

Action for fraudulent misrepresentation—

Leave to serve notice of writ out of the jurisdiction—Defendant domiciled in Scotland—Whether claim for breach of warranty could be included in statement of claim—RSC Ord 11, r 1(e). **Waterhouse v Reid** [1938] 1 235, CA.

Action founded on tort committed within jurisdiction—

Claim for negligence—Alleged tort committed in America—Damages suffered within jurisdiction—Whether tort committed within the jurisdiction—RSC Ord 11, r 1(ee). **George Monro Ltd v American Cyanamid and Chemical Corp** [1944] 1 386, CA.

Libel in foreign newspaper—Small circulation in England—Foreign plaintiff—No regulation in England—Substance of complaint—RSC Ord 11, r 1(ee). **Kroch v Rossell et Compagnie Société des Personnes à Responsabilité Limitée** [1937] 1 725, CA.

Slander published in England—Allegations made by one Californian oil company about activities of another Californian oil company in Persian Gulf—Action already started in USA between the two companies—Allegations in that action similar to those made in England—US proceedings halted—Whether leave to serve writ out of jurisdiction should be given—RSC Ord 11, r 1(1)(h). **Buttes Gas & Oil Co v Hammer** [1971] 3 1025, CA.

Action in respect of breach of contract committed within jurisdiction—

Action for account and payment of commission—Breach of contract committed within jurisdiction—English company acting as American company's agent in Europe—Commission payable in England—Duty to render account in England—Prima facie case—RSC Ord 11, r 1(e). **International Corp Ltd v Besser Manufacturing Co** [1950] 1 355, CA.

Breach—Proof of breach—Contracts to pay pension—Contract made in Czechoslovakia—Pension payable in England—RSC Ord 11, r 1(e), Ord 11, r 4. **Vitkovice Horni a Hutni Tezirstvo v Korner** [1951] 2 334, HL.

Breach committed within the jurisdiction—Contract to deliver cargo to one port in United Kingdom to be nominated by plaintiffs—Ship lost when outside jurisdiction and before port of delivery nominated—Whether breach committed within the jurisdiction—Whether evidence that plaintiffs would have nominated English port admissible—RSC Ord 11, r 1(e). **Cuban Atlantic Sugar Sales Corp v Compania de Vapores San Eleferio Limitada** [1960] 1 141, CA.

Contract—Need for prima facie evidence of contract with defendant—RSC, Ord 11, rr 1(e), 4. **Cromie v Moore** [1936] 2 177, CA.

Discretion to grant leave to serve out of jurisdiction—Factors to be considered—RSC Ord 11, r 1(e). **Oppenheimer v Louis Rosenthal & Co AG** [1937] 1 23, 315, CA.

Necessity for evidence that breach occurred within jurisdiction—Leave on terms. **Malik v Narodni Banka Ceskoslovenska** [1946] 2 663, CA.

Action on contract governed by English law—

Charterparty between English owners and Dutch charterers—Charterparty governed by English law—Charterers' residence and principal place of business in Holland—Charterers having no place of business or assets in England—Claim by owners based on exemption clause—Dutch law compelling Dutch courts to disregard exemption clause even though charterparty governed by English law—Leave to serve notice of writ out of jurisdiction—RSC Ord 11, r 1(f). **Coast Lines Ltd v Hudig & Veder Chartering NV** [1972] 1 451, CA.

Express provision and further conflicting provision—RSC Ord 11, r 1(e)(iii). **Ocean Steamship Co Ltd v Queensland State Wheat Board** [1941] 1 158, CA.

Governed by English law—Bill of lading—Contract not governed by English law—RSC Ord 11, r 1(e)(iii)(g). **Kadel Chajkin and Co De Ltd v Mitchell Cotts & Co (Middle East) Ltd, and A/S Motortramp** [1947] 2 786, KBD.

Law with which transaction has closest and most real connection—Contract between oil company registered in London and defendant domiciled in Texas—Contract for exploitation by company of defendant's oil concession in Libya—Parties not intending contract to be governed by law of Libya—Whether contract 'governed by English law'—RSC Ord 11, r 1(1)(f)(iii). **BP Exploration Co (Libya) Ltd v Hunt** [1976] 3 879, QBD.

Action on contract made by or through agent within jurisdiction on behalf of principal without—

Through—Non-delivery of cargo—Action against shipowners by consignees abroad—Charterparty between foreigners for carriage between foreign countries—Charterparty in English—Signature on behalf of shipowners by English agents—Bill of lading in English signed by master abroad—RSC Ord 11, r 1(e)(ii), (iii). **The Metamorphosis** [1953] 1 723, Adm.

Action on contract made within the jurisdiction—

Written contract made in England—Contract subsequently amended by written agreement made abroad—Whether amended contract 'made within the jurisdiction'—RSC Ord 11, r 1(1)(f)(i). **BP Exploration Co (Libya) Ltd v Hunt** [1976] 3 879, QBD.

PRACTICE (cont)

Service out of the jurisdiction (cont)—

Action properly brought against defendants within jurisdiction—

Person out of jurisdiction necessary or proper party—Action by conservancy authority against shipowners and Minister of Supply as cargo owner to recover expenditure incurred in removing wreck—Shipowners outside jurisdiction—RSC Ord 11, r 1(g). **Tyne Improvement Comrs v Armement Anversoile Societe Anonyme, The Brabo** [1949] 1 294, HL.

Person out of jurisdiction necessary or proper party—Action not properly brought against defendant within jurisdiction—Duty of applicant to make full disclosure to court of all the facts within his knowledge—Court to consider all relevant matters without necessity of deciding disputed matters—RSC Ord 11, r 1(g). **Bloomfield v Sereniyi** [1945] 2 646, CA.

Person out of jurisdiction necessary or proper party—Real defendant to action—Discretion of court—Nondisclosure not amounting to attempt to deceive court—RSC Ord 11, r 1(g). **Ellinger v Guinness, Mahon & Co, Frankfurter Bank AG and Metall Gesellschaft AG** [1939] 4 16, ChD.

Action to enforce, rescind, dissolve, annul or otherwise affect a contract—

Otherwise affect—Claim for moneys owing under frustrated contract—Whether a claim 'otherwise affecting' a contract—RSC Ord 11, r 1(1)(f). **BP Exploration Co (Libya) Ltd v Hunt** [1976] 3 879, QBD.

Bankruptcy petition. *See Bankruptcy* (Petition—Service—Service out of jurisdiction).

Customs and Excise—

Condemnation and forfeiture of goods seized by Commissioners of Customs and Excise—Whether writ can be served out of jurisdiction—RSC Ord 11, r 1. **Comrs of Customs and Excise v IFS Irish Fully Fashioned Stockings Ltd** [1957] 1 108, QBD.

Defendant resident in Ireland—

Resident in Eire—Whether 'resident in Ireland'—RSC Ord 11, rr 1, 2—Irish Free State (Consequential Adaptation of Enactments) Order 1923 (S R & O 1923 No 405). **Hume Pipe and Concrete Construction Co Ltd v Moracrete Ltd** [1942] 1 74, CA.

Foreign jurisdiction clause—

Circumstances justifying service out of jurisdiction despite clause—Distributorship agreement—Plaintiffs having sole agency rights for distribution of first defendants' products in United Kingdom—First defendants a Spanish company—Agreement providing for 'law claims' to be submitted to Barcelona court—First defendants terminating agreement and appointing second defendants as agents—Second defendants an English company—Plaintiffs claiming injunctions and damages against both defendants for breach of contract, interference with contract and conspiracy—First defendants a proper and necessary party to proceedings against second defendants—RSC Ord 11, r 1. **Evans Marshall & Co Ltd v Bertola SA** [1973] 1 992, CA.

Insurance—Jewellers' block policy—Policy signed in England—Foreign companies as assured—Policy to be governed by Belgian law and disputes to be subject to Belgian jurisdiction—Loss of jewels in Naples—Alleged smuggling into Italy—Underwriters repudiated liability on ground of non-disclosure and illegality—Action by underwriters in England claiming declaration that policy void or voidable—Whether leave to serve notice of writ out of jurisdiction should be given—RSC Ord 11, r 1(f). **Mackender v Feldia AG** [1966] 3 847, CA.

Information of debt—

Writ of subpoena—Party out of the jurisdiction—Applicability of RSC Ord 11—Crown Suits Act 1865, s 37—Supreme Court of Judicature (Consolidation) Act 1925, s 99(1)(g). **Attorney-General v Prosser** [1938] 3 32, CA.

Master and servant—

Contract made in jurisdiction—Personal injuries to employee sustained abroad—Action framed in contract—Whether only remedy in tort—RSC Ord 11, r 1(e). **Matthews v Kuwait Bechtel Corp** [1959] 2 345, CA.

Necessary or proper party to action—

Action properly brought against a person served within the jurisdiction—Person out of jurisdiction a necessary or proper party to action—Counterclaim—Foreign resident bringing action against English defendant—Plaintiff leaving address for service within jurisdiction as required by rules of court—Defendant serving defence and counterclaim on plaintiff—Defendant making another foreign resident second defendant to counterclaim—Whether counterclaim 'properly brought' against plaintiff—Whether court having jurisdiction to give leave to serve defence and counterclaim on second defendant to counterclaim out of the jurisdiction—RSC Ord 11, r 1(1)(f). **Derby & Co Ltd v Larsson** [1976] 1 401, HL.

Partnership—

One partner out of jurisdiction—Action against partnership in firm's name—Service of writ on partners within jurisdiction—Service of concurrent writ on partner outside jurisdiction—RSC Ord 11, r 1(g). Ord 48A, rr 1, 3, 8. **West of England Steamship Owners Protection and Indemnity Assn Ltd v John Holman & Sons** [1957] 3 421, ChD.

Writ or notice of writ—

Ghana—Fully responsible status accorded to part of Her Majesty's dominions—Subsequently became republic—Writ served on Ghanaian company—RSC Ord 11, r 6—Ghana (Consequential Provision) Act 1960, s 1(1). **Gohoho v Guinea Press Ltd** [1962] 3 785, CA.

Setting aside order for extension of time limit. *See Limitation of action* (Extension of time limit—Order for extension—Application by defendants to set aside order).

Setting down for trial. *See Trial*—Setting down action, *post*.Sheriff's interpleader. *See Interpleader* (Sheriff's interpleader).

Shorthand writer's notes—

Application for transcript—

Notes of discussion in judge's private room. **Vernazza v Barburiza & Co Ltd** [1937] 4 364, CA.

PRACTICE (cont)

Shorthand writer's notes (cont)—

Costs—

Costs payable by another or out of fund—Request by judge for transcript—Evidence of request for taxing master—Duty of counsel. **Griffiths v Howard** [1939] 3 56, ChD.

Costs payable by another or out of fund—Right of judge to require transcript—Legal Aid (General) Regulations 1950 (SI 1950 No 1359), reg 14(3). **Theocharides v Joannou** [1953] 2 52, ChD.

Evidence—

Copies of notes for Court of Appeal—Provision at public expense—Discretion of judge executive function—No jurisdiction in Court of Appeal to entertain appeal. **Bradford Third Equitable Benefit Building Society v Borders (No 2)** [1939] 3 29, CA.

Slip rule—

Judgment or order—

Correction. *See* **Judgment** (Order—Correction—Accidental slip or omission).

Solicitor—

Generally. *See* **Solicitor** (Practice).

Right of audience—

Crown Court. *See* **Crown Court** (Practice—Solicitor—Right of audience).

Special case—

Form—

Arbitration proceedings. *See* **Arbitration** (Special case—Form).

Special case by order before trial—

Special question in respect of question of law—Hypothetical facts—Questions of law stated for the opinion of court on basis of assumptions of fact—Unsuitability of procedure. **Sumner v William Henderson & Sons Ltd** [1963] 2 712, CA.

Specific performance—

Summary procedure. *See* **Specific performance** (Summary procedure—Master's powers).

Speedy trial. *See* **Trial**—Order for early trial, *post*.Statement of claim. *See* **Statement of Claim**.Stay of execution. *See* **Execution** (Stay).

Stay of proceedings—

Action against several defendants—

Terms of compromise of action between plaintiff company and all defendants except defendant B were agreed—Whether second defendant who acted in person but was neither present in court not represented should attend to sign registrar's book—Second defendant agreeing to terms of compromise and signing copy of minutes of order expressing agreement with such modifications as court thought fit—Court's discretion. **The Kota Tinggi (Johore) Rubber Co Ltd v Burden** [1970] 1 388, ChD.

Action based on felony—

Facts alleged in pleadings consistent with misdemeanour. **Jack Clark (Rainham) Ltd v Clark** [1946] 2 683, CA.

Action by several plaintiffs against one defendant—

Present action based on negligence alone—193830670 Other actions based on negligence and breach of statutory duty—Whether present action should be stayed pending hearing of one test action—Supreme Court of Judicature (Consolidation) Act 1925, s 41(a)—RSC Ord 49, r 8. **Perry v Croydon Borough Council** [1938] 3 670, CA.

Action to enforce defendant's statutory obligations—

Bill before Parliament affecting rights of parties—Whether action should be stayed pending passing of Bill into law. **Willow Wren Canal Carrying Co Ltd v British Transport Commission** [1956] 1 567, ChD.

Admiralty proceedings—

Jurisdiction. *See* **Admiralty** (Jurisdiction—Action in rem—Stay of proceedings).

Lis alibi pendens. *See* **Admiralty** (Practice—Lis alibi pendens—Stay of proceedings in England).

Arbitration—

Agreement providing for arbitration—Admiralty—Action in rem—Release of arrested ship. *See* **Admiralty** (Jurisdiction—Action in rem—Arrest of ship—Stay of proceedings).

Arbitration. *See* **Arbitration** (Stay of court proceedings).

Bankruptcy—

Action by bankrupt—Minority shareholder's action—Whether action stayed. **Birch v Sullivan** [1958] 1 56, ChD.

Action pending against bankrupt—Whether action stayed by his adjudication—Bankruptcy Act 1914, s 9(1). **Realisations Industrielles et Commerciales SA v Loescher and Partners** [1957] 3 241, QBD.

Chancery Division. *See* **Chancery Division**—Stay of proceedings, *ante*.

Company—

Compulsory winding-up—Stay pending appeal against winding-up order. *See* **Company** (Compulsory winding-up—Winding-up order—Stay pending appeal).

Creditors' voluntary winding-up—Stay of winding-up—Application. *See* **Company** (Voluntary winding-up—Power to stay winding-up—Creditor's voluntary winding-up—Application for stay of winding-up).

Concurrent proceedings before county court and High Court—

Issue of law in both sets of proceedings substantially the same—Landlord and tenant proceedings—Tenant applying in county court for new tenancy under Part II of Landlord and Tenant Act 1954—Landlord subsequently by summons seeking High Court declaration that tenancy not a business tenancy—Stay of High Court proceedings. **The Royal Bank of Scotland Ltd v Citrusdal Investments Ltd** [1971] 3 558, ChD.

Landlord and tenant—Tenant applying in county court for new tenancy—High Court action by tenant for declaration of invalidity of landlord's notice to terminate tenancy—Whether county court hearing should be adjourned until after High Court proceedings. **Airport Restaurants Ltd v Southend-on-Sea Corpn** [1960] 2 888, CA.

PRACTICE (cont)

Stay of proceedings (cont)—

Concurrent proceedings before distinct tribunals—

Election by plaintiffs held to be the appropriate course—Factors determining exercise of court's discretion—Material time at which to assess position—Appeal to Minister against planning decision—Application to High Court concurrently for declaration on validity of planning permission—Application for stay of High Court proceedings—Withdrawal of appeal to Minister after argument before High Court and before decision on staying proceedings in High Court—Duplication of proceedings in regard to issue raised in appeal to Minister—Whether abuse of process—Whether discretion to grant stay should be exercised—Supreme Court of Judicature (Consolidation) Act 1925, s 41. **Slough Estates Ltd v Slough Borough Council** [1967] 2 270, ChD.

Concurrent proceedings in England and abroad—

Divorce petition presented in England—Proceedings against petitioner begun by respondent abroad—Advantage to petitioner from proceeding in England—Delay by respondent. **Sealey (otherwise Callan) v Callan** [1953] 1 942, Div.

Substantial reasons for letting English action continue. **Ionian Bank Ltd v Couvreur** [1969] 2 651, CA.

Contempt of court—

Order of English court in 1955 for wife to deliver up documents to husband—Order made to preserve position pending decision of foreign court on community property—Order not personally served but wife informed of contents—Non-compliance with order—Order of foreign court in 1957 awarding bulk of community property and alimony to wife—Action by wife in 1963 claiming arrears of alimony under order of foreign court—Application by husband to stay proceedings on ground that wife in contempt of court—Whether wife precluded by contempt from pursuing action—Whether justice required stay of proceedings. **Bettinson v Bettinson** [1965] 1 102, ChD.

Criminal proceedings. *See* **Criminal Law** (Trial—Stay of proceedings).

Divorce. *See* **Divorce** (Practice—Stay of proceedings).

Foreign court—

Determination of disputes by. *See* **Conflict of laws** (Stay of proceedings—Agreement to refer to foreign court—Action commenced in England).

Foreign defendant—

Action in rem—Action by foreign plaintiff against defendant's vessel whilst vessel visiting English port—Grounds justifying stay—Balance of advantage to plaintiff and disadvantage to defendant of allowing action to proceed—Degree of relative advantage and disadvantage—Substantial advantage—Necessity of showing that disadvantage even more substantial—Collision between plaintiff's and defendant's vessels in foreign waters—Proceedings arising out of collision commenced by other parties against defendant in foreign court—Foreign court appropriate and convenient forum in which action to be tried—Plaintiff offered adequate security for foreign proceedings—Additional expense and delay of separate action in England—Whether sufficient grounds to justify a stay of proceedings. **The Atlantic Star** [1973] 2 175, HL.

Writ served on defendant whilst on short visit to England—Grounds justifying a stay—Burden of proving grounds on defendant—Proof that continuance of action would work an injustice to defendant as being oppressive or vexatious—Proof that stay would not work injustice to plaintiff—Plaintiff and defendant living in France—Sale of painting by defendant to plaintiff in France—Action for rescission of contract—Writ issued in England—Writ served on defendant while in England for Ascot races—Issue one of fact whether painting by named artist—Issue international in character—Parties' associations international and not only with France—No presumption that proceedings oppressive where defendant served whilst on brief visit to England—Defendant failing to show that trial in England would work injustice to himself and stay of action would not cause injustice to plaintiff. **Maharanees of Baroda v Wildenstein** [1972] 2 689, CA.

Jurisdiction—

Company. *See* **Company** (Compulsory winding-up—Stay of proceedings—Other proceedings against company—Jurisdiction of court).

Medical examination of plaintiff at defendant's request—

Disclosure of medical reports to plaintiff—Stay subject to condition that defendant undertakes to supply reports to plaintiff—Examination of plaintiff a privilege—Defendant not entitled to privilege unless he acts fairly by it by showing reports to plaintiff. **Clarke v Martlew** [1972] 3 764, CA.

Exchange of medical reports—Reciprocity—Plaintiff agreeing to submit to examination on condition defendant supplies copy of report—Plaintiff only entitled to insist on condition if willing to supply copies of own medical reports in exchange. **McGinley v Burke** [1973] 2 1010, QBD.

Refusal to submit to psychiatric examination—Amendment of statement of claim substantially enlarging gravity of neurosis aspect of case as originally pleaded—Delay—Plaintiff's refusal unreasonable. **Lane v Willis** [1972] 1 430, CA.

Refusal to submit to examination—Claim under Fatal Accidents Acts—Claim by widow in respect of husband's death—Widow's expectation of life relevant to compensation element in claim—No evidence that widow's health and expectation of life other than normal for her age—Whether stay of proceeding should be granted until widow submits to examination. **Baugh v Delta Water Fittings Ltd** [1971] 3 258, QBD.

Refusal to submit to examination—Psychiatric examination. *See* **Stay of proceedings**—Medical examination of plaintiff at defendant's request—Refusal to submit to psychiatric examination, *ante*.

Refusal to submit to examination—Refusal unreasonable. **Edmeades v Thames Board Mills Ltd** [1969] 2 127, CA.

PRACTICE (cont)**Stay of proceedings (cont)—****Persons entitled to apply for stay—**

Applicant not a party to the action—Omnibus operator which had issued free pass on condition that operator and its servants should not be liable to holder of pass for injury, however caused—Pass-holder injured boarding omnibus—Action by pass-holder against servant of operator—Whether operator entitled to stay of proceedings—Supreme Court of Judicature (Consolidation) Act 1925, s 41, proviso(b). **Gore v Van der Lann (Liverpool Corpn intervening)** [1967] 1 360, CA.

Proceedings against company—

Company in liquidation sued by employee of company for damages for wrongful dismissal by liquidator. **Cook v 'X' Chair Patents Co Ltd** [1959] 3 906, ChD.

Proceedings in tort—

Discretion to stay proceedings arising out of acts in respect of which proceedings have been, or could be, brought in Industrial Court. *See* **Industrial relations** (Proceedings—Duplication).

Removal of stay—

Action in respect of fatal accident—Action commenced by one dependant in personal capacity—Consent order embodying settlement—Application by another dependant to remove stay—Discretion of court to order removal. **Cooper v Williams** [1963] 2 282, CA.

Serving soldier—

Defendant's witnesses out of jurisdiction—Whether case must stand over until return of witnesses within the jurisdiction. **Coppin v Bush** [1942] 1 518, CA.

Usual order—RSC Ord 36, r 10. **Bell v Walker** [1941] 1 307, CA.

Winding-up of company by court. *See* **Company** (Compulsory winding-up—Stay of proceedings).

Striking out—

Notice of appeal. *See* **Court of Appeal** (Notice of appeal—Striking out).

Originating summons. *See* **Originating summons** (Striking out).

Pleading—

Action commenced in High Court—Jurisdiction of county court to strike out pleading. *See* **County court** (Jurisdiction—Striking out pleading—Action commenced in High Court).

Divorce. *See* **Divorce** (Practice—Pleading—Striking out).

Submission of list of authorities—

Queen's Bench Division. *See* List of authorities—procedure—Queen's Bench Division, *ante*.

Subpoena ad testificandum—**Service—**

Service out of jurisdiction—Revenue side—Need for leave of court. **Attorney-General v Prosser** [1938] 3 32, CA.

Setting aside—

Subpoena issued before pleadings closed or summons for directions issued—RSC Ord 37, r 34A. **MacBryan v Brooke** [1946] 2 688, CA.

Subpoena duces tecum—**Company—**

Compelling production of documents. **Penn-Texas Corpn v Murat Anstalt (No 2)** [1964] 2 598, CA.

Issue—

Jurisdiction of Queen's Bench Division where powers of inferior tribunal incomplete—Whether leave to issue necessary—Documents need not be specified in subpoena before it is issued—RSC Ord 37, r 30. **Soul v Inland Revenue Comrs** [1963] 1 68, CA.

Summary judgment—**Action for damages for negligence—**

Manner in which application for summary judgment to be made—Affidavit stating deponent's belief no defence except as to amount of damages—Claim arising out of accident causing death or personal injury—Defence mere denial of negligence and damage—Tribunal to assess damages—RSC Ord 14, r 1. **Dummer v Brown** [1953] 1 1158, CA.

Conditional leave to defend—

Appeal—Grounds on which Court of Appeal may interfere with condition imposed by judge in exercise of his discretion under RSC Ord 14, r 6. **Gordon v Cradock** [1963] 2 121, CA.

Payment into court as condition of giving leave—RSC Ord 14. **Ionian Bank Ltd v Couvreur** [1969] 2 651, CA.

Payment into court as condition of giving leave—Need for foundation for imposing such condition—RSC Ord 14, r 1. **Fieldrank Ltd v Stein** [1961] 3 681, CA.

Leave to defend—

Bill of exchange—Action on bill of exchange by holder in due course—Defence of fraud affecting bill set up—Clear evidence of value given in good faith and no ground shown on which that evidence could be challenged—Defendant not entitled to leave to defend where such evidence but only if real issue raised whether bill was taken in good faith and for value—RSC Ord 14, r 3(1). **Bank fur Gemeinwirtschaft v City of London Garages Ltd** [1971] 1 541, CA.

Expedition of proceedings—Chancery Division. *See* **Chancery Division**—Interlocutory procedure—Expedition—Judge's order—Form of order—Order on motion for interlocutory relief—Order on giving leave to defend on summons for summary judgment, *ante*.

Factors to be considered—Question of amount of liability—Qualified admission—£10,000 or thereabouts—Condition on which leave granted. **Contract Discount Corpn Ltd v Furlong** [1948] 1 274, CA.

Parol agreement varying agreement within Statute of Frauds—Part performance—RSC Ord 14. **Knapp-Fisher v Crisp** [1936] 3 560, CA.

Set-off and counterclaim—Equitable set-off—RSC Ord 14. **Morgan and Son Ltd v S Martin Johnson & Co Ltd** [1948] 2 196, CA.

PRACTICE (cont)

Summary judgment (cont)—

Leave to defend (cont)—

Some other reason for a trial—Bill of exchange—Action on bill of exchange by holder in due course—Defence of fraud and illegality raised but no reasonable defence disclosed—RSC Ord 14, r 3(1). **Bank für Gemeinwirtschaft v City of London Garages Ltd** [1971] 1 541, CA.

Some other reason for a trial—Sale of matrimonial home occupied by wife—Purchaser to be put to strict proof of his claim to evict wife—RSC Ord 14, r 3(1). **Miles v Bull** [1968] 3 632, QBD.

Trial without further pleadings—Concurrent remedies—Application for alternative relief—Unconditional leave to defend—Appeal from judge—Right of appeal—Supreme Court of Judicature (Consolidation) Act 1925, s 31(1)(c)—RSC Ord 14, r 1(a), Ord 14B, r 1. **Comrs of Customs and Excise v Anco Plant & Machinery Co Ltd** [1956] 3 59, CA.

Leave to sign judgment—

Application in respect of one of several claims—Second application, in respect of remaining claims—Whether second application maintainable—RSC Ord 14, r 1(a). **Stainer v Tragett** [1955] 3 742, CA.

Defective affidavit in support of summons—Whether further affidavits admissible—RSC Ord 14, rr 1(a), 2. **Les Fils Dreyfus et Cie Société Anonyme v Clarke** [1958] 1 459, CA.

Payment into court of part of claim in full satisfaction with admission of liability—Application to sign final judgment for whole amount—Possible defence disclosed in plaintiff's affidavit—RSC Ord 14, r 4. **Recenia R Shaerf Ltd v Smyth** [1936] 2 1622, CA.

Set-off and counterclaim—Bill of exchange given in pursuance of contract—Claim by defendants for damages for breach—RSC Ord 14, r 1. **James Lamont & Co Ltd v Hyland Ltd (No 2)** [1950] 1 929, CA.

Setting aside judgment—

Summons for judgment—No attendance by defendants—Judgment signed—Negotiations—Lapse of time for appealing—Unsuccessful application to extend time for appealing—Application to set aside judgment—Whether judgment obtained 'by default'—RSC Ord 14, r 1, Ord 27, r 15. **Spira v Spira** [1939] 3 924, CA.

Specific performance. *See* **Specific performance** (Summary procedure).

Summons for judgment—

Form—Amendment—Forms PF 11 and PF 12. **Practice Direction** [1970] 1 343.

Service—Time—Ten clear days—RSC Ord 14, r 2(3)(amended by S1 1969 No 1894). **Practice Direction** [1970] 1 343.

Summary procedure—

Injunction. *See* **Injunction** (Summary procedure—Practice).

Summons—

Chancery Division—

Adjournment of summons—Adjournment with witnesses—Certificate of length of trial. **Practice Direction** [1963] 1 766, ChD.

Adjournment of summons—Consent to adjournment—Letter of consent signed by all parties received by master's summons clerk. **Practice Direction** [1969] 1 490, ChD.

Adjournment of summons—Summons adjourned generally—Restoration by telephone. **Practice Direction** [1969] 1 490, ChD.

Hearing—

Short summonses and applications—List—Procedure. **Practice Direction** [1972] 2 1168, QBD.

Chancery Division—

Chambers summons adjourned to judge—Hearing. **Practice Direction** [1974] 3 880, ChD.

Papers not lodged when summons taken out—Procedure for sending papers to summons clerk by post. **Practice Direction** [1969] 1 490, ChD.

Procedure summons—Setting down—Hearing. **Practice Direction** [1974] 3 880, ChD.

Commercial action—

Transfer of action to Commercial Court. *See* **Commercial Court** (Practice—Summons for transfer of action).

Issue before service of notice of change of solicitors—

Waiver of irregularity—RSC Ord 7, r 2(1)(6). **Krakauer v Katz** [1954] 1 244, CA.

Restoration of summons to list—

Restoration without leave—Procedure. **Practice Direction** [1969] 2 1140.

Summons for leave to proceed under Courts (Emergency Powers) Act 1939—

Summons not served on judgment debtor—Distinction between nullity and irregularity in procedure—Inherent jurisdiction of court—RSC Ord 70, rr 1, 2. **Craig v Kanseen** [1943] 1 108, CA.

Summons for directions—

Admission of written statement—

Interlocutory applications—Application on summons for directions for admission of written statement under Evidence Act 1938, s 1(2)—Order by master allowing evidence—Jurisdiction—'Court'—Supreme Court of Judicature (Consolidation) Act 1925, s 99(1)(d)—Evidence Act 1938, s 1—RSC Ord 30, r 2(2)(d), Ord 54, r 12. **Friend v Wallman** [1946] 2 237, CA.

Assessment of case—

Grading as to substance, difficulty or public importance—Duty of parties to furnish court with up-to-date details affecting assessment. **Practice Direction** [1972] 1 288, QBD.

Entry of trial—

Order for entry of trial—When necessary. **Southey-Roberts Estates Ltd v Roe** [1956] 2 829, ChD.

PRACTICE (cont)**Summons for directions (cont)—****Expert evidence—**

Application for leave to call expert evidence—Disclosure of reports—Procedure—RSC Ord 25 (as amended by the Rules of the Supreme Court (Amendment) 1974, S I 1974 No 295)—RSC Ord 38, rr 35-44 (as added by the Rules of the Supreme Court (Amendment) 1974, S I 1974 No 295). **Practice Direction** [1974] 2 966, QBD.

Issue—

Defendant failing to serve defence—Jurisdiction of court to give directions for trial. **Austin v Wildig** [1969] 1 99, ChD.

Order for early trial on. *See* Trial—Order for early trial—Order on summons for directions, *post*.

Place and mode of trial—

Order fixing place and mode of trial—When order should be made. **Southey-Roberts Estates Ltd v Roe** [1956] 2 829, ChD.

Supplemental order. *See* Judgment (Order—Supplemental order).

Third party procedure—**Application—**

Company—Winding-up—Third party procedure not applicable—Court in winding-up having no jurisdiction to settle disputes between persons outside winding-up. **Re A Singer & Co (Hat Manufacturers) Ltd** [1943] 1 225, CA.

Application by third party to join fifth party as additional fourth party—

Procedure—RSC Ord 16A, r 1(1), Ord 16, r 11. **Piddock v Clifford Products Ltd (Industrial Guarding Equipment Ltd third party, Baldwin Instrument Co Ltd fourth party, BAL Ltd fifth party)** [1960] 3 805, CA.

Claims and issues between defendant and another party—

Counterclaim by third party, a defendant in the action—Third-party notice served by second defendants on third defendants claiming indemnity or contribution—Third-party notice treated as statement of claim—Defence and counterclaim by third defendants—Whether court had jurisdiction to entertain counterclaim—Counterclaim including claim for payment and set-off of alleged indebtedness for work done in relation to matters, some of which were not the subject of the plaintiffs' action—Exercise of court's discretion to strike out counterclaim or to direct separate trials—RSC Ord 15, rr 2, 5(2), Ord 16, rr 1(3), 8(3). **The Normar** [1968] 1 753, Adm.

Notice—

Claim against third party—Discretion of court to allow—Effect of notice to involve plaintiff in costly litigation, which may otherwise be avoided. **City of Glasgow Corp v Robertson or Cameron** [1936] 2 173, HL.

Claim against third party—Relief or remedy relating to or connected with original subject-matter of action—Connection with 'original subject-matter of the action'—Specific performance of agreement to sell land to vendors sued for specific performance of their subsequent sale of land—Whether third party notice valid—RSC Ord 16, r 1(1)(b). **Standard Securities Ltd v Hubbard** [1967] 2 622, ChD.

Claim against third party—Relief or remedy relating to or connected with original subject-matter of action—Relief or remedy substantially the same as some relief or remedy claimed by the plaintiff—Substantially the same relief—Claim for damages by plaintiff and by defendants against third party—Damages claimed on different grounds—Purpose of third party claim to determine who should ultimately bear loss—Whether relief claimed 'substantially the same'—RSC Ord 16, r 1(1)(b). **Myers v N & J Sherick Ltd** [1974] 1 81, ChD.

Insurer—Action for damages for personal injuries—Personal injuries caused by motor car—Trial by judge alone—Whether defendants can add insurance company as a defendant—Repudiation of liability under the policy by insurance company—RSC Ord 16A, r 1. **Harman v Crilly** [1943] 1 140, CA.

Insurer—Action for damages for personal injuries—Personal injuries caused by motor car—Whether plaintiff can add defendant's insurance company as a defendant—RSC Ord 19, r 27. **Carpenter v Eblewhite** [1938] 4 41, CA.

Setting aside—Specific performance action on agreement for sublease for 21 years of part of land on which plaintiffs were erecting multi-storey car park and filling station—Subsequent agreement by defendants for underlease to third parties of multi-storey car park—Defendants issued third party notice for specific performance of agreement for underlease to third parties—Whether relief claimed against third parties substantially the same as relief claimed by plaintiff against the defendants—Whether third party notice should be set aside—RSC Ord 16, r 1(1)(b). **Chatsworth Investments Ltd v Amoco (UK) Ltd** [1968] 3 357, CA.

Third party proceedings—**Dismissal for want of prosecution—**

Inordinate and inexcusable delay—Four years between third party notice and summons for directions—Delay arising from plaintiffs' delay—Delay in action also by defendants—Defendants' need to be able to apply to strike out plaintiffs' action. **Slade & Kempton (Jewellery) Ltd v N Kayman Ltd (Leroy Third Party)** [1969] 3 786, CA.

Settlement between plaintiff and defendant—

Effect—Whether third party proceedings barred by settlement. **Stott v West Yorkshire Road Car Co Ltd** [1971] 3 534, CA.

Time—**Extension of time—**

Conditional leave to defend after judgment entered—Condition not fulfilled within time specified—Application to extend time—RSC Ord 64, r 7. **Manley Estates Ltd v Benedek** [1941] 1 248, CA.

Time. *See* Time.

PRACTICE (cont)

Title of proceedings—

Application for injunction—

Grant of injunction before issue of originating process. **Re N (infants)** [1967] 1 161, ChD.

Chancery Division—

Approved methods. **Practice Note** [1959] 2 629, ChD.

Trustees—

Individuals' names. **Routh Trustees v Central Land Board** [1960] 2 436, CA.

Transcripts—

Court of Appeal. *See* **Court of Appeal** (Practice—Transcripts).

Transfer of action—

Action assigned to Chancery Division—

Whether action should be transferred to Court of Chancery of Lancaster—Court of Chancery of Lancaster Act 1952, s 1. **Fullerton v Ryman** [1956] 2 232, ChD.

Commercial Court to. *See* **Commercial Court** (Practice—Summons for transfer of action).

County court to High Court. *See* **County court** (Transfer of action—Transfer to High Court).

High Court to county court. *See* **County court** (Transfer of action—Transfer from High Court).

Transfer of action commenced in district registry to London—

Defendant's right to have proceedings removed to London—RSC Ord 5, rr 1, 2—RSC Ord 12, rr 4, 6, 7, Ord 35, rr 13, 14, 15, 16, 17, Ord 36, rr 1, 10. **Pooley v Bryning** [1940] 2 377, CA.

Transfer of defence bond—

Transfer on death of holder. *See* **Defence bond** (Transfer—Transfer on death of holder).

Transfer of proceedings between Divisions of High Court—

Husband and wife—

Action by wife in Queen's Bench Division for arrears under maintenance agreement—Divorce and related proceedings started by husband in Family Division—Divorce petition defended by wife—Application by wife for summary judgment in Queen's Bench action—No procedure for obtaining summary judgment in Family Division—Financial rights and obligations of parties in issue in Family Division proceedings—Whether Queen's Bench action should be transferred to Family Division to be tried with other issues. **Temple v Temple** [1976] 3 12, CA.

Trial—

Cause list—

Removal of case from cause list—Order obtained by defendants dismissing jury action against them for want of prosecution—Crown Office not notified of order so that case left in list and brought on for hearing—Duty of both parties' solicitors to notify Crown Office of order—Liability for costs thrown away—RSC Ord 36, r 29(6). **Williamson v British Boxing Board of Control** (1929) [1958] 2 228, QBD.

Short cause list. *See* Trial—Lists—Short cause list, *post*.

Solicitor's duty—Information to clerk of lists—Watching lists—Attendance at trial—Payment by solicitor personally of costs thrown away by non-attendance. **Practice Note** [1962] 768, QBD.

Continuance of postponed hearing—

Trial resumed before a different judge after two years' interval—No evidence called before second judge—Judgment given by reference to recorded notes of first judge—Trenggan Civil Procedure Code, s 75. **Chua Chee Chor v Chua Kim Yong** [1963] 1 102, PC.

Criminal proceedings. *See* **Criminal law** (Trial).

Date for trial—

Altering fixed date for non-jury actions. **Practice Direction** [1958] 3 678, QBD.

Fixing date for non-jury actions. **Practice Direction** [1957] 2 97, QBD.

Postponing date of trial of non-jury actions. **Practice Direction** [1957] 1 422, QBD.

Trial out of London—Fixture of date—Certificate of readiness for trial. **Practice Direction** [1972] 1 287, QBD.

Departure from case originally pleaded—

Employers' liability established on same ground of fault as alleged by pursuer, but on statement of fact averred by defenders—No such radical departure from the case averred by pursuer as would justify absolving employers from liability—Breach of statutory duty under Mines and Quarries Act 1954, s 48(1). **John G Stein and Co Ltd v O'Hanlon** [1965] 1 54, HL.

Particulars of negligence—Finding against plaintiff on facts pleaded—Finding in favour of plaintiff on facts not pleaded—Order for new trial. **Lloyde v West Midlands Gas Board** [1971] 2 1240, CA.

Pleaded negligence irrelevant in view of facts established—Such radical departure from case averred by plaintiff as to justify absolving defendants from liability—No evidence satisfying court of defendants' negligence on facts established. **Waghorn v George Wimpey & Co Ltd** [1970] 1 474, QBD.

Estimate of length of trial—

Certificate of counsel—Summons adjourned with witnesses. **Practice Direction** [1963] 766, ChD.

Duty of solicitors—Substantial error in estimate—Transfer of case from short non-jury list to long non-jury list—Solicitors of both parties ordered to pay costs thrown away—RSC Ord 36, r 29(6). **Ibbs v Holloway Bros Ltd** [1952] 1 220, KBD.

Joint responsibility of counsel, counsel's clerk and solicitors to tell Clerk of the List estimated length of trial of case in warned list—RSC Ord 36, r 9(2). **Practice Note** [1952] 1 576, QBD.

PRACTICE (cont)

Trial (cont)—

Evidence—

Evidence taken before court examiner prior to trial of action—Order by master that evidence of witness be so taken and filed and that copy may be read and given in evidence on the trial—Whether evidence so taken becomes *per se* evidence in the trial—RSC Ord 37, v 5(1), 18. **Fisher v C H T Ltd** [1965] 2 601, QBD.

Power of court to order party to civil suit to attend to give evidence. **Fallon v Calvert** [1960] 1 281, CA.

Lists—

Procedure—Lists to be kept by Clerk of the Lists. **Practice Direction** [1957] 1 219, QBD. Short cause list—Cases suitable for. **Dott v Brown** [1936] 1 543, CA.

Matrimonial causes. *See* Matrimonial causes—Trial, *ante*.

Notice and entry of trial—

Inspection of documents not completed. **Southey-Roberts Estates Ltd v Roe** [1956] 2 829, ChD.

Order for early trial—

Date of trial in discretion of judge in charge of list—R Ord 36, r 1A (1)(c). **Baron v Baron** [1952] 2 689, CA.

Order on summons for directions. **Practice Direction** [1958] 3 678, QBD.

Pleadings not closed—Inherent jurisdiction—Order that action be set down for trial in Part 1 of list, fixing date, and certifying speedy trial—RSC Ord 34, r 2(1). **Austin v Wildig** [1969] 1 99, ChD.

Party acting in person—

Right to assistance—Refusal of right—Effect of refusal. **McKenzie v McKenzie** [1970] 3 1034, CA.

Right to assistance—Right of friend to assist by attendance, note-taking and advice. **McKenzie v McKenzie** [1970] 3 1034, CA.

Place of trial—

Adjournment of trial—Adjournment to such place as court thinks fit—Witness—Examination—Witness too infirm to travel to London—Witness fit to be examined at village where she lived—Village not a place authorised for trial of proceedings in Chancery Division—Power of court to adjourn trial to village for purpose of hearing witness's testimony—RSC Ord 33, r 1, Ord 35, r 3. **St Edmundsbury and Ipswich Diocesan Board of Finance v Clark** [1973] 2 1155, ChD.

London. **Practice Direction** [1965] 1 899, QBD.

Separate trials—

Action begun by writ—Different questions—Trial of one or more questions before others—Liability and damages—Claim for personal injuries—Trial of issue of liability before trial of issue of damages—Circumstances in which order for separate trials should be made—Just and convenient—Time and expense involved in trying issue of damages—RSC Ord 33, r 4(2). **Coenen v Payne** [1974] 2 1109, CA.

Issues of liability and damages—Separation of issues—Action for damages for breach of contract—Trial of liability separated from questions of amount of damages—No clear division of issues on pleadings—R S C Ord 36, r 7. **Polskie Towarzystwo Handlu Zagranicznego dla Elektrotechniki 'Elektrim' Spolka Z Ograniczona Odpowiedzialnoscia v Electric Furnace Co Ltd** [1956] 2 306, CA.

Third party's counterclaim. *See* Third party procedure—Claims and issues between defendant and another party—Counterclaim by third party, a defendant in the action, *ante*.

Setting down action—

Setting down action for new trial—Jury action—Jury having disagreed at original hearing. **Davidson v Rodwell** [1955] 2 499, QBD.

Setting down action for new trial—Queen's Bench Division—Setting down after time ordered has expired. **Practice Direction** [1964] 3 496, QBD.

Setting down action for trial in Middlesex—Lists—Applications concerning dates for trial. **Practice Direction** [1958] 3 678, QBD.

Speeches—

Order of speeches—Right to last speech—Defendant leading documentary evidence when cross-examining plaintiff's witnesses but calling no witnesses—Whether defendant has right to last speech. **Weller v O'Brien** [1962] 3 65, QBD.

Submission of no case—

Election—Negligence—No case to answer—Whether defendant submitting no case should be put to his election. **Storey v Storey** [1960] 3 279, CA.

Rejection of submission—Appeal against rejection. *See* No case to answer—Rejection of submission—Appeal against rejection of submission, *ante*.

Time for ruling on submission. *See* No case to answer—Time for ruling on submission, *ante*.

Time to make submission—Power of judge to enter judgment on case as whole—RSC Ord 36, r 39. **Grinstead v Hadrill** [1953] 1 1188, CA.

Trial by jury—

Discretion of court—Factors to be considered—Action for damages against solicitor—Plaintiff making detailed allegations of professional negligence against solicitor—Solicitor denying allegations—Plaintiff seeking trial by judge and jury—Plaintiff fearing judges would be prejudiced in favour of lawyers and so biased against him—Extent to which issues of credibility, integrity and honour relevant in determining mode of trial—Whether court to take into account plaintiff's fears of possible bias—Administration of Justice (Miscellaneous Provisions) Act 1933, s 6(1). **Williams v Beesley** [1973] 3 144, HL.

PRACTICE (cont)

Trial (cont)—

Trial by jury (cont)—

Fraud—Charge of fraud alleged to be in issue—Defendant convicted of robbery of bank—Action by bank against defendant for money had and received through robbery—Whether defendant entitled to trial with a jury—Whether robbery 'fraud'—Whether action should be directed to be tried with a jury as a matter of discretion—Administration of Justice (Miscellaneous Provisions) Act 1933, s 6(1)(a). **Barclays Bank Ltd v Cole** [1966] 3 948, CA.

Libel—Trial of action requiring prolonged examination of documents—Discretion of court to order trial by judge alone—Exercise of discretion—Circumstances in which proper to order trial by jury although trial requiring prolonged examination of documents—Importance of case to party's reputation and honour—Action raising issues of national importance—Party entitled to trial by jury if he desires it—Administration of Justice (Miscellaneous Provisions) Act 1933, s 6(1). **Rothermere v Times Newspapers Ltd** [1973] 1 1013, CA.

Non-commercial case—Application for City of London special jury—Application to be made to master. **Hagen v National Provincial Bank Ltd** [1937] 3 617, CA.

Slander—Application for trial with jury—Second defendant added when action part heard without a jury—Application by second defendant for a jury—Administration of Justice (Miscellaneous Provisions) Act 1933 s 6—RSC Ord 36, r 1. **Salvalene Lubricants Ltd v Darby** [1938] 1 224, CA.

Trial without pleadings—

Election to proceed—Procedure for summary judgment not a concurrent remedy—RSC Ord 14, r 1(a), Ord 14B, r 1. **Comrs of Customs and Excise v Anco Plant & Machinery Co Ltd** [1956] 3 59, CA.

Witnesses. *See* **Witness**.Tribunal. *See* **Tribunal**.

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PRIVY COUNCIL

Abatement of appeal—

Death of party—

Death before appeal heard—Party not appearing and not represented—Appeal in divorce matter—Reserved judgment prepared—Discovery of death of party. **Hodge v Marsh** [1936] 1 848, PC.

Abolition of right of appeal to—

Canada. *See* **Canada** (Appeals to Privy Council—Abolition).

Appeal—

Leave to appeal. *See* **Leave to appeal, post**.

Limits inter se of constitutional powers of commonwealth and state—

Australia. *See* **Australia** (Appeal to Privy Council—Limits of constitutional powers).

Right of appeal. *See* **Right of appeal, post**.

Appearance—

Withdrawal of appearance—

Withdrawal of appearance—Effect of withdrawal on appeal—Judicial Committee Rules 1957 (S 1 1957 No 2224), r 34. **Khatijabai Jiwa Hasham v Zenab D/O Chandu Nansi** [1958] 3 719, PC.

Compromise of appeal—

Minor's interest—

Certificate of court below. **Shaikh Shukrullah Musammat Zohra Bibi** [1936] 3 1011, PC.

Concurrent findings of fact in courts below—

Review of facts by Judicial Committee—

Concurrent findings of High Court and Court of Appeal—Practice of the Judicial Committee regarding re-hearing—Practice not to review facts for third time unless exceptional circumstances—Dissentient judgment in Court of Appeal not justifying review. **Chua Chee Chor v Chua Kim Yong** [1963] 1 102, PC.

PRIVY COUNCIL (cont)

Contempt of court—

Penalty for contempt—

Jurisdiction of Privy Council to entertain appeal—Order of overseas court of record imposing penalty for contempt. **Ambard v Attorney-General of Trinidad and Tobago** [1936] 1 704, PC.

Costs—

Counsel's fees—

Refresher fees. **Practice Note** [1959] 1 733, PC.

Printed record—

Inclusion of matters not relevant to subject-matter of appeal—Cost of printing irrelevant matter deducted from costs. **Lim Siew Neo v Pang Keah Swee** [1958] 1 313, PC.

Criminal appeal—

First review of summing-up—

Duty of Judicial Committee. **Broadhurst v Reginam** [1964] 1 111, PC.

Right of appeal—

Appeal by special leave—Grounds for allowing appeal. **Renouf v Attorney-General for Jersey** [1936] 1 936, PC.

Special leave to appeal—

Misdirection—Burden of proof—Circumstances only within knowledge of prisoners—Ceylon Evidence Ordinance (No 14 of 1895), s 106. **Attygalle v R** [1936] 2 116, PC.

Exclusion of right of appeal—

Power of Dominion legislature—

Power to exclude appeals from dominion and provincial courts—British North America Act 1867, ss 91, 92, 101—Statute of Westminster 1931. **Attorney-General of Ontario v Attorney-General of Canada (Attorney-General of Quebec intervening)** [1947] 1 137, PC.

Exercise of discretion—

Review by Judicial Committee—

Principle on which Judicial Committee may review discretion of Commonwealth court—Delay in making deposit required for purpose of appeal—Deposit not made 'forthwith'—Appeal dismissed for non-compliance with rules—Application to restore appeal refused—West African Court of Appeal Rules, r 23(3). **Short v Attorney-General of Sierra Leone** [1964] 1 125, PC.

Fresh point—

Fact and law—

Evidence must be such as to establish that facts would support new plea—Fresh point of law not readily allowed even if facts beyond dispute. **United Marketing Co v Hasham Kara** [1963] 2 553, PC.

Trial before judge and jury—

Fresh point raised which was not raised or considered by judge and jury. **Perkowski v City of Wellington Corpn** [1958] 3 368, PC.

General Medical Council—

Powers of Privy Council. *See* **Medical practitioner** (Appeal against determination of disciplinary committee—Powers of Privy Council).

Jurisdiction—

Appeal from Ceylon. *See* **Ceylon** (Appeals to Privy Council—Jurisdiction—Right of Privy Council to entertain appeals from Ceylon).

Effect of independence—

Nature of Order in Council implementing report of Judicial Committee—Constitutional position of Judicial Committee in relation to appeals—Status of independence attained by former colony—Whether jurisdiction of Her Majesty in Council terminated by necessary implication. **Ibralebbe v Reginam** [1964] 1 251, PC.

Finality of decision of colonial supreme court—

Membership of a colonial legislative council—Order in Council providing for reference by legislative council of colony to supreme court—Finality of court's determination—Absence of jurisdiction over such questions save on reference from legislative council—Office as minister similarly outside jurisdiction—Trinidad and Tobago (Constitution) Order in Council 1950 (S I 1950 No 510), s 40(1) as substituted by Trinidad and Tobago (Constitution) (Amendment) Order in Council 1956 (S I 1956 No 835), s 27. **Patterson v Solomon** [1960] 2 20, PC.

Leave to appeal granted—

Objection to jurisdiction to hear appeal—No dissatisfaction with order of court from which leave to appeal sought—Ruling asked on law applicable to assessment of damages at new trial—Judicial Committee Act 1833, s 3. **Australian Consolidated Press Ltd v Uren** [1967] 3 523, PC.

Matter within competency of tribunal—

Jurisdiction to hear appeal on matter—No intention that right of appeal to Crown should attach—Ceylon—Validity of Parliamentary election—Ceylon (Parliamentary Elections) Order in Council 1946, s 50, s 83. **Senanayake v Navaratne** [1954] 2 805, PC.

Leave to appeal—

Appeal in forma pauperis—

Certificate by counsel that in his view there was reasonable ground of appeal—Applications should not be granted automatically merely because counsel's certificate that there was reasonable ground of appeal has been furnished. **Nelson v East African Newspapers (Nation Series) Ltd** [1963] 3 812, PC.

Ceylon. *See* **Ceylon** (Appeals to Privy Council—Leave).

Grant of special leave—

Grant not disentitling appellant to contend that no appeal lay. **Patterson v Solomon** [1960] 2 20, PC.

Ground for refusing leave—

Insufficient doubt to justify leave to appeal. **Thornton v The Police** [1962] 3 88, PC.

Leave to appeal (cont)—

Jurisdiction—

Question as to jurisdiction to hear appeal—Decision on jurisdiction before advising grant of leave. **Dennis Hotels Proprietary Ltd v State of Victoria** [1961] 2 940, PC.

Person aggrieved—

Attorney-General in colony—Attorney-General responsible for bringing before judge any misconduct of barrister or solicitor of sufficient gravity to warrant disciplinary action—**West African (Appeal to Privy Council) Order in Council 1949**, s 34. **Attorney-General of the Gambia v N'jie** [1961] 2 504, PC.

Special leave—

Discretionary—Special leave refused even though appeal lay as of right under territorial legislation. **Lopes v Valliappa Chettiar** [1968] 2 136, PC.

Grant—Effect. *See* Leave to appeal—Grant of special leave—Grant not disentitling appellant to contend that no appeal lay, *ante*.

Prerogative. **Raja Sarda Mahesh Prasad Singh v Badri Lal Sahu** [1936] 1 361, PC.

Time within which to apply for leave—

West Africa. *See* **West Africa** (Appeal to Privy Council—Leave to appeal—Application to be made to court within 21 days from date of judgment to be appealed from).

Precedent. *See* **Precedent** (Privy Council).

Reasons for decision—

Statement of reasons—

Need for court from which appeal arises to state reasons for decision—Judicial Committee Rules 1925 (SR & O 1925, No 440), r 16. **Nana Osei Assibey III, Kokofuhene v Nana Kwasi Agyeman, Boagyaahene** [1952] 2 1084, PC.

Right of appeal—

Appeal as of right dependent on amount of the matter in dispute—

Amounts expressed in pounds sterling—Whether English pounds meant—Verdict of £500 damages given in New South Wales—Minimum amount for appeal as of right '£500 sterling'—Australian pound worth less than English pound—SR & O 1909 No 1521, r 2(a). **Skelton v Jones** [1962] 3 85, PC.

Appeal by taxpayer—Competency—Competency dependent on amount taxpayer been adjudged liable to pay being £500 or over—Constitution of Jamaica, s 110(1)(a). **Fletcher v Income Tax Comr** [1971] 3 1185, PC.

Decision of Court of Appeal—

Jurisdiction conferred on Court of Appeal by special Act. **Hem Singh v Mahant Basant Das** [1936] 1 356, PC.

East Africa. *See* **East Africa** (Appeal to Privy Council—Appeal as of right).

Ontario from. *See* **Canada** (Appeals to Privy Council—Ontario—Appeal as of right).

West Africa. *See* **West Africa** (Appeal to Privy Council—Appeal as of right).

West Africa—

Appeal as of right—

Value of matter in dispute. *See* **West Africa** (Appeal to Privy Council—Appeal as of right—Value of matter in dispute).

PRIZE COMPETITION

See **Gaming** (Prize competition).

PRIZE LAW

Condemnation—

Freight—

Ship of neutral country carrying contraband—Seizure with hostile intent—Neutral country becoming belligerent enemy. **Part Cargo ex SS Sado Maru** [1947] 1 430, Adm.

Goods—

Ownership of goods—Exchange of goods immediately before hostilities—Public policy. **The Glenearn** [1941] 1 371, Adm.

Ship—

Anticipating embargo—Arrest of enemy merchant ship before outbreak of war—Whether immune from confiscation—Hague Convention VI, arts 1, 2. **The Pomona** [1943] 1 408, Adm.

Claims arising out of purported exercise of belligerent rights barred by peace treaty—Ships aground in port—Capture of port—Ships formally boarded and certificate of prize signed four years after armistice, but before signing of peace treaty—Naval Prize Act 1864, s 16. **The Bellaman, The Agostino Bertani** [1948] 2 679, Adm.

Enemy flag—Duress—Ship built in Germany by German subsidiary of Dutch company under agreement with and subsidised by German government. **The Unitas** [1950] 2 219, PC.

Partly constructed ship not capable of floating—Ship under construction in building yard—Seizure at same time as capture of port—No intention by captors to seize as immediate prize—Seizure after surrender of belligerent. **Schiffahrt-Treuhand, GmbH v HM Procurator-General** [1953] 1 364, PC.

Seizure of ship of enemy-occupied country—Claim against ship for salvage—Condemnation delayed—Rights of salvors. **The Prins Knud** [1941] 1 443, Adm.

Ship taken out of harbour when capture of harbour imminent—Scuttled in deep water about a mile and a half from shore—Formally seized as prize six years after capture of harbour. **The Giuseppe Mazzini** [1949] 2 1094, Adm.

Ships scuttled in land-locked bay of enemy island—Subsequent capture of island—Ships formally seized in prize six years after capture of island. **The Giuseppe Mazzini** [1949] 2 1094, Adm.

Costs—

Crown's immunity from costs—

Compensation in lieu of freight—Matter referred by agreement to registrar—Question of amount only. **The Panaghiotis** [1942] 2 525, Adm.

PRIZE LAW (cont)

Salvage—

Payment—

Jurisdiction to order payment. **France Fenwick Tyne and Wear Co Ltd v HM Procurator-General** [1942] 2 453, PC.

Visit and search—

Neutral ship ordered to British port for better examination—
Reasonable suspicion. **The Mim** [1947] 2 476, PDA.

PRIZES

Amusements with prizes. *See* **Gaming** (Amusements with prizes).

See **Gaming** (Amusements with prizes).

Distribution of prizes by chance. *See* **Gaming** (Lottery—Scheme involving distribution of prizes by chance).

PROBATE

Action—

Compromise of action—

Form of order—Chancery Division. **Practice Direction** [1972] 3 319, ChD.

Terms of compromise not signed by party cited to see proceedings—Application that party cited should be bound by compromise—RSC Ord 16, r 9A. **Re Tame (dec'd)** [1965] 2 293, Prob.

Continuance of action—

Corporate executor plaintiff—Amalgamation with another company—Whether corporate executor, having transferred business of acting as personal representative, should continue as plaintiff in the action. **Re Skinner (dec'd)** [1958] 3 273, Prob.

Costs—

Taxation—Finality of taxation. *See* **Costs** (Taxation—Finality of taxation—Probate action).

Evidence—

Conflict of laws—Knowledge and approval of contents of testamentary instrument—Rule whereby affirmative evidence required that disposition was by a free and capable testator—Burden of proof—Lex fori to be followed. In **the Estate of Fuld (dec'd)** (No 3) [1965] 3 776, Prob.

Privilege—Witness whose evidence relates to execution of testamentary document—Court's witness on that matter—Legal professional privilege does not prevent the court requiring production of documents in order to reach truth as to execution. In **the Estate of Fuld (dec'd)** (No 2) [1965] 2 657, Prob.

Second action—

Dismissal—First action brought in personal capacity—Second action brought in representative capacity before judgment in first action—Grounds for dismissal of second action—Plaintiff cognisant of first action and not intervening. **Re Langton (dec'd)** [1964] 1 749, CA.

Witness—

Status—Attesting witness called to give evidence as to due execution—Collateral issues of testamentary capacity and knowledge and approval—Whether attesting witness giving evidence on collateral issues witness of court. **Webster v Webster** [1974] 3 822, ChD.

Citation—

Application for issue—

Procedure—Non-contentious matter—Postal application—Non-Contentious Probate Rules 1954 (S 1 1954 No 796), rr 45, 46, 47. **Practice Direction** [1969] 3 192, Prob.

Citation to propound a will—

Codicil—Citation by executor of will to beneficiary under codicil to propound codicil—Beneficiary not entering appearance to citation—No evidence of invalidity of codicil—Whether probate of will should be granted without codicil. **Re Muirhead (dec'd)** [1971] 1 609, Prob.

Contentious probate—

Practice. *See* **Practice**—Contentious probate, *post*.

Corporation—

Grant to corporation. *See* **Grant**—Grant to corporation entitled to grant if an individual, *post*.

Costs—

Administrator pendente lite—

Costs of administration and remuneration of administrator—Possible benefit of administration to estate—Apportionment between estate and party bringing proceedings. **Re Howlett (dec'd)** [1950] 1 485, Prob.

Allocatur—

Form—Expression of sums of money—Decimalisation—Decimal Currency Act 1969, Sch 1. **Practice Direction** [1970] 3 176, Prob and Div.

Incidence—

Undue influence alleged but not proved—Whether litigation due to fault of testator or of beneficiary establishing will—Whether costs payable out of estate. **Re Cutcliffe (dec'd)** [1958] 3 642, CA.

Security for costs—

Caveator—Contentious proceedings. *See* **Costs** (Security for costs—Person in position of plaintiff—Probate proceedings—Caveator).

Taxation—

Bill of costs—Item numbers to be shown—Rules of the Supreme Court (No 3) 1959 (S 1 1959 No 1958), Sch 2, App 2. **Practice Direction** [1960] 1 347, Prob.

Finality of taxation—Order for payment by defendant of plaintiff's costs—Subsequent taxation of costs of administrator pendente lite—Accounts of administrator—Right of plaintiff to further order for payment of administrator's costs and accounts. In **the Estate of Segalov (dec'd)** [1952] 2 107, Prob.

Objection to taxing officer's decision. **Practice Direction** [1955] 2 326, Prob.

PROBATE (cont)

County court—

Jurisdiction—

Power to pronounce for validity of will—County Courts Act 1934, ss 60(1), 61. **Re Thomas (decd)** [1949] 1 1048, Prob.Decimisation. *See* Grant—Form—Expression of sums of money—Decimisation, *post*.

Document—

Admission to probate—

Considerations relevant—Difference between considerations admissible for the purpose of deciding on admissibility to probate and for determining construction of testamentary document admitted to probate. **Le Cras v Perpetual Trustee Co Ltd Scheme Trustee** [1967] 3 915, PC.Document of no dispositive effect—Codicil the provisions of which as construed by court take effect only on testator surviving his wife—Duty of Probate Court to construe document—Surrounding circumstances. **In the Estate of Thomas** [1939] 2 567, Prob.Document of no dispositive effect—Document with no dispositive contents executed as will—Lists of bequests on separate papers found under same cover—Papers not referred to in will—Circumstantial evidence. **In the Estate of Saxton** [1939] 2 418, Prob.Holograph will attested but not signed—Will enclosed in envelope signed but not attested. **In the Estate of Mann** [1942] 2 193, Prob.Practice. *See* Practice—Documents, *post*.Domicile of deceased. *See* Grant—Domicile of deceased, *post*.

Evidence—

Admission of document. *See* Document—Admission to probate, *ante*.Conflict of laws. *See* Action—Evidence—Conflict of laws, *ante*.Foreign law. *See* Practice—Non-contentious probate—Evidence of foreign law, *post*.Lost will. *See* Lost will—Evidence, *post*.Parol evidence. *See* Lost will—Parol evidence of contents, *post*.Privilege. *See* Action—Evidence—Privilege, *ante*.Exclusion of words in will. *See* Grant—Exclusion of words in will, *post*.

Exclusive of matter—

Signature of legatees not intending to witness will. *See* Will (Attestation—Superfluous signature).

Executors—

Release from liability. *See* Renunciation—Release of executors from liability in respect of estate, *post*.Restriction on number. *See* Grant—Restriction on number of executors to whom grant may issue in respect of same property, *post*.

Fees—

Impressed stamps. **Practice Note** [1957] 3 298, Prob.

Foreign will—

Jurisdiction. *See* Grant—No estate of deceased within jurisdiction—Power to make grant, *post*.

Validity—

Proof—Formal validity according to local law—Will made before notary—Properly authenticated copy issued by notary—Presumption of validity. **Practice Direction** [1972] 3 1019, Fam.D.

Grant—

Application—

Legitimation—Applicant's right dependent on a person's legitimation—Practice. **Practice Direction** [1965] 2 560, Prob.Postal applications—Principal Registry—Facilities for postal applications by solicitors. **Practice Direction** [1975] 2 280Practice where deceased dying domiciled abroad. **Practice Direction** [1953] 2 1154, Prob.

Attorney—

Further grant to attorney administrator. **Practice Direction** [1957] 1 602, Prob.

Confirmation—

Re-sealing—Provision of copies for deposit. **Probate Notice** [1954] 2 534, Prob.Death, as evidence of. *See* Evidence (Death—Evidence for procedural matters—Grant of probate or letters of administration).

Domicile of deceased—

Statement of domicile in grant—Non-Contentious Probate Rules, 1954 (S I 1954 No 796), r 6(5)—Non-Contentious Probate (Amendment) Rules 1961 (S I 1961 No 72), r 2. **Practice Direction** [1961] 1 465, Prob.

Exclusion of words in will—

Carrying out intention of testator. **Re Swords** [1952] 2 281, Prob.Carrying out intention of testator—Intention that codicil should revoke particular sub-clause of will—Slip by drafting solicitor in carrying out instructions—Codicil as drafted and executed revoking whole of relevant clause—Whether court required by any rule of evidence or law to hold that testator knew and approved of contents of codicil—Absence of power for court to add words to codicil—Omission of words as nearest way to give effect to intentions of testator. **Re Morris (decd)** [1970] 1 1057, Prob.Carrying out intention of testator—Testator wishing to benefit two persons—Testator executing will in their favour—Testator believing stocks and shares required to be dealt with in separate blocks in separate wills—Testator subsequently executing three further wills in favour of same beneficiaries—Each of the three wills concerned with different blocks of property—Each will containing revocation clause—Wills executed on same day—No indication which executed last—Power of court to authorise omission of words inserted inadvertently or by misunderstanding—Misunderstanding by testator as to what necessary to carry out his wishes. **Re Phelan (decd)** [1971] 3 1256, Prob.

PROBATE (cont)

Grant (cont)—

Exclusion of words in will (cont)—

Offensive passages in will—Power of court—Scandalous and defamatory statements in will—No dispositive effect—Statements forming part of reasons for dispositions of property. In **the Estate of Hall (dec'd)** [1945] 2 159, Prob.

Power of court—Omission altering sense of what remains. **Re Horrocks** [1939] 1 579, CA.

Testator ignorant of gift effected by words—Testator intending different gift—Error in carrying out instructions of testator—Intention of testatrix that after life interests capital of residuary estate should devolve on M—Error in typing out engrossment of will—Will as executed omitting gift of capital to M and giving capital to M's wife and children—Whether parts of residuary clause dealing with capital should be omitted from probate on ground that testatrix did not know and approve of gift of capital to persons other than M. **Re Reynette-James (dec'd)** [1975] 3 1037, ChD.

Form—

Expression of sums of money—Decimalisation—Decimal Currency Act 1969, Sch 1. **Practice Direction** [1970] 3 176, Prob and Div.

Grant to corporation entitled to grant if an individual—

Grant to nominee. **Practice Direction** [1956] 1 305, Prob.

Joint will—

Later will revoking joint will—Conditional will—Grant of administration with joint will annexed. In **the Estate of O'Connor (dec'd)** [1942] 1 546, Prob.

Limited grant—

Will and two codicils—Second codicil disputed—Grant of probate limited to will and first codicil. In **the Estate of Day** [1940] 2 544, Prob.

No estate of deceased within jurisdiction—

Power to make grant—Foreign will disposing only of property abroad—Administration of Justice Act 1932, s 2(1). In **the Estate of Wayland** [1951] 2 1041, Prob.

Power to make grant—Whether grant to be made to alleged father to enable him thereby to establish paternity of deceased who died abroad—Administration of Estates Act 1932 s 2. **Aldrich v Attorney-General (Rogers intervening)** [1968] 1 345, Prob.

Notice—

Standing search—Practice. *See Administration of estates* (Grant of administration—Standing search).

Opposition—

Want of knowledge and approval—Circumstances giving rise to suspicion—Need to be attendant on, or relevant to, preparation and execution of will—Allegation of immoral conduct between deceased and beneficiary struck out—Contentious Probate Rules, r 40A—RSC Ord 19, rr 25(a), 27. **Re R (dec'd)** [1950] 2 117, Prob.

Person incapable of managing his own affairs—

Applicant not authorised by Court of Protection—Application for use and benefit of person not resident in institution—Evidence of incapacity such person. **Practice Direction** [1969] 1 494, Prob.

Applicant not authorised by Court of Protection—Evidence of incapacity of person for whose benefit grant required. **Practice Notes** [1958] 2 600, Prob, [1962] 2 613, Prob.

Practice—

Solicitor's office reference—Inclusion in grant. **Practice Directions** [1970] 3 176, Prob and Div, [1972] 1 1056, FamD.

Reopening—

Applications for resealing—Dispensing with advertisement of application—Colonial Probates Acts 1892 and 1927. **Probate Notice** [1954] 2 552, Prob.

Cessation of resealing in England of grants made in Rhodesia—Applications for grants of representation in case of persons dying domiciled in Rhodesia. **Practice Direction** [1970] 1 1248, Prob.

English grants in Northern Ireland. **Probate Notice** [1956] 2 361, Prob.

Scottish confirmation or Northern Irish or colonial grant—Application by post at Principal Probate Registry. **Practice Direction** [1959] 2 560, Prob.

Restriction on number of executors to whom grant may issue in respect of same property—

Same property—Testator appointing four general executors and one literary executor in respect of certain manuscripts—Number to whom grant may issue—Supreme Court of Judicature (Consolidation) Act 1925, s 160(1). In **the Estate of Holland** [1936] 3 13, Prob.

Revocation of grant—

Executors incapable of performing duties. In **the Estate of Galbraith** [1951] 2 470, Prob.

Swearing false Inland Revenue affidavit. In **the Estate of Cope** [1954] 1 698, Prob.

Trial—Summing-up—Misdirection—Solicitor author of will and chief beneficiary—General direction to jury to regard with suspicion evidence of author of will—No sufficiently jealous scrutiny of evidence. **Wintle v Nye** [1959] 1 552, HL.

Second or subsequent grant through solicitor—

Application by post at Principal Probate Registry—Non-Contentious Probate Rules 1954 (S I 1954 No 796), r 3(1). **Practice Direction** [1959] 2 560, Prob.

Solemn form—

Procedure for compelling after grant in common form—Caveat and citation by party disputing—Citor's duty to issue writ—Motion for grant of letters of administration inapplicable—Whether 'contentious business'—Non-Contentious Probate Rules 1954 (S I 1954 No 796), r 47—Contentious Probate Business Rules, r 3. In **the Estate of Jolley (dec'd)** [1964] 1 596, CA.

Setting aside grant—Defendant not appearing at trial—Absence of defendant not due to mistake but to negotiation amounting to compromise—RSC Ord 36, r 33. **Re Barraclough (dec'd)** [1965] 2 311, Prob.

PROBATE (cont)**Grant (cont)—****Solicitor's estate—**

Law Society's nominees—Nominees obtaining grant of representation to estate of solicitor practising on his own at his death—Procedure. **Practice Direction** [1965] 1 923, Prob.

Incapacity. *See* Grant—Person incapable of managing his own affairs, *ante*.

Inland Revenue affidavit. *See* Grant—Revocation of grant—Swearing false Inland Revenue affidavit, *ante*.

Intention of testator—

Carrying out intention of testator. *See* Grant—Exclusion of words in will—Carrying out intention of testator, *ante*.

Joint will. *See* Grant—Joint will, *ante*.

Jurisdiction—

County court. *See* County court—Jurisdiction, *ante*.

Limited grant. *See* Grant—Limited grant, *ante*.

Lost will—**Evidence—**

Execution—Attestation—Completed draft will—Person shown as attesting witness in draft will unable to recollect execution—*Omnia praesumuntur rite esse acta*. **Re Webb (decd)** [1964] 2 91, Prob.

Ex parte application for probate of reconstructed contents—

Application to be made to register—Non-Contentious Probate Rules 1954 (SI 1954 No 796), r 53(1). **In the Estate of Nuttall (decd)** [1955] 2 921, Prob.

Parol evidence of contents—

Standard of proof. **In the Estate of Wippermann** [1953] 1 764, Prob.

Soldier's or mariner's privileged will. *See* Will (Soldier's or mariner's privileged will—Lost will—Probate).

Non-contentious probate—

Practice. *See* Practice—Non-contentious probate, *post*.

Pleading—**Defence—**

Defence that testatrix of unsound mind—Particulars—RSC Ord 19, r 25A. **Re Reynolds (decd)** [1955] 1 18, CA.

Plaintiff alleged in defence to have feloniously caused death of deceased testator—Relevance—Defendant entitled to make allegation though plaintiff not prosecuted. **In the Estate of G (decd)** [1946] 1 579, Prob.

Postal application—

Citation. *See* Citation—Application for issue, *ante*.

Power of court—

Exclusion of words in will. *See* Grant—Exclusion of words in will, *ante*.

Practice—**Attorney—**

Further grant to attorney administrator. *See* Grant—Attorney, *ante*.

Cause list—

Cases set down for hearing up to 31st December 1967—No date fixed—Removal from list—Restoration. **Practice Direction** [1968] 3 871, Prob and Div.

Citation—

Postal application for issue. *See* Citation—Application for issue, *ante*.

Contentious probate—

Accounts of administrators pendente lite—Information as to unconverted assets—Exhibition of inventory—Frequency of accounts. **Practice Direction** [1973] 2 334, ChD.

Copies of scripts—Lodgment. **Practice Direction** [1973] 2 334, ChD.

Form of guarantee by administrators pendente lite. **Practice Direction** [1971] 3 327, ChD.

Short causes—Hearing. **Practice Direction** [1971] 3 327, ChD.

Trial of action outside London—Transmission of scripts—Procedure—RSC Ord 36, r 3. **Practice Direction** [1974] 3 752, ChD.

Trial on affidavit evidence—Verification of original will or codicil—RSC Ord 76, rr 10, 12. **Practice Direction** [1974] 3 752, ChD.

Costs—

Taxation. *See* Costs—Taxation, *ante*.

Documents—

Documents lodged in registry—Form—Expression of sums of money—Decimalisation—Exception for bill of costs—Decimal Currency Act 1969, Sch 1. **Practice Direction** [1970] 3 176, Prob and Div.

Size—RSC Ord 66, r 1. **Practice Direction** [1967] 3 848, Prob.

Non-contentious probate—

Evidence of foreign law—Persons qualified to give evidence—Particulars to be set out in affidavit—Civil Evidence Act 1972, s 4(1)—Non-Contentious Probate Rules 1954 (SI 1954 No 796), r 18. **Practice Direction** [1972] 3 912, FamD.

Foreign divorces—Recognition. **Practice Direction** [1972] 1 144, FamD.

Grant of representation—Caveat—Extension for further six months—Application for extension to be made in month before expiry of caveat—Requirement for written application—Fees—Non-Contentious Probate Rules 1954 (SI 1954 No 796), r 44—Non-Contentious Probate Fees Order 1975 (SI 1975 No 1344), r 5—Non-Contentious Probate (Amendment) Rules 1976 (SI 1976 No 1362), r 44(4A). **Practice Direction** [1976] 3 416, FamD.

Omission of words from probate of will—

Application—Copy of order to be annexed to will. **Practice Note** [1964] 1 952, Prob, **Practice Direction** [1968] 2 592.

Order—

Form—Expression of sums of money—Decimalisation—Decimal Currency Act 1969, Sch 1. **Practice Direction** [1970] 3 176, Prob and Div.

PROBATE (cont)

Practice (cont)—

Receipt or certificate given by solicitor's clerk—

Signature by clerk. **Practice Direction** [1953] 2 1234, Prob and Div.

Summons—

Counsel summonses—Place of hearing. **Practice Note** [1959] 2 144, Prob.

Summons for directions—

Subsequent applications to be by notice—RSC Ord 30, r 7(3). **Practice Direction** [1963] 2 483, Prob.Taxation of costs. *See* Costs—Taxation, *ante*.

Trial—

Place of trial—London. **Practice Direction** [1965] 1 1039, Prob.

Warrant—

Form—Expression of sums of money—Decimalisation—Decimal Currency Act 1969, Sch 1.

Practice Direction [1970] 3 176, Prob and Div.

Writ—

Form—Expression of sums of money—Decimalisation—Decimal Currency Act 1969, Sch 1. **Practice Direction** [1970] 3 176, Prob and Div.Issue of writ—Registrar acting in quasi-judicial capacity in relation to issue of writ—Discretion to refuse issue of writ where action would be abuse of process—Plaintiff's action for revocation, and for probate of earlier will, in personal capacity dismissed—Same relief sought on same issues by plaintiff in representative capacity in subsequent action—Issue of subsequent writ rightly refused—RSC Ord 76, r 2(3). **Re Langton (decd)** [1964] 1 749, CA.

Probate Division—

Power of court to decide questions of construction—

Motion to admit later of two wills to probate—Revocation of former will by later—Extent of powers of construction of Probate Division. **In the Estate of Fawcett** [1941] 2 341, Prob.

Procedure—

Citation—

Postal application. *See* Citation—Application for issue, *ante*.Property abroad. *See* Grant—No estate of deceased within jurisdiction, *ante*.

Renunciation—

Release of executors from liability in respect of estate—

Right of executors to release from liability. **Tiger v Barclays Bank Ltd** [1951] 2 262, KBD.Revocation of grant. *See* Grant—Revocation of grant, *ante*.Signature of will. *See* Will (Execution—Place of testator's signature).Solemn form. *See* Grant—Solemn form, *ante*.

Solicitor's estate—

Law Society's nominees. *See* Grant—Solicitor's estate, *ante*.Status of witness. *See* Action—Witness—Status, *ante*.Summons. *See* Practice—Summons, *ante*.

Two wills admitted—

Construction. *See* Will (Construction—Two wills admitted to probate).

Valuation—

'Valuation agreed for probate'. *See* Will (Valuation of effects—Probate valuation—Direction to executors to transfer land at 'valuation agreed for probate').

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Validity—

Execution. *See* Will (Execution).Forgery—Evidence—Conviction—Admissibility. *See* Evidence (Conviction—Admission as evidence in civil proceeding—Subsisting conviction—Conviction subject to appeal—Adjournment of civil proceedings pending appeal—Probate—Will—Validity—Allegation that will a forgery).

Will of person dying domiciled abroad—

Will relating to English estate admitted to probate by court of deceased's domicile—Probate in England of duly authenticated copy. **Re Yahuda (decd)** [1956] 2 262, Prob.

Writ—

Issue by registrar. *See* Practice—Writ—Issue of writ, *ante*.**PROBATE JUDGE**Whether probate judge a trustee. *See* Trust and trustee (Probate judge—Vesting of estate of intestate—Whether probate judge a trustee).**PROBATION**Magistrates' jurisdiction. *See* Magistrates (Jurisdiction—Probation).

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Divorce—

Reconciliation—Reference to probation officer. *See* Divorce (Reconciliation—Certificate with regard to—Names etc of persons qualified to help—Organisations and persons regarded as authorised to help).

Extent of authority—

Matrimonial proceedings—Whether authorised to make admissions or apply for adjournment on behalf of party. **Smith v Smith** [1957] 2 397, Div.

Order—

Breach—

Crown Court—Jurisdiction—Jurisdiction of section of Crown Court which made order. *See* Crown Court (Jurisdiction—Single indivisible court—Jurisdiction of sections of Crown Court—Jurisdiction to examine decision of other section of court—Probation order).Generally. *See* Sentence (Probation order).

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Costs—

Taxation. *See* **Admiralty** (Costs—Taxation).

Appeal—

Appeal against committal for contempt of court. *See* **Contempt of court** (Committal—Appeal against committal).

Criminal proceedings—

Examination of witnesses. *See* **Criminal law** (Court of Appeal—Examination of witnesses).Decision of land registrar. *See* **Land registration** (Appeal—Procedure—Appeal to nominated judge of Chancery Division from decision of registrar).

House of Lords—

Leave—Criminal cause or matter. *See* **House of Lords** (Leave to appeal).'Leapfrog' procedure. *See* **House of Lords** (Appeal from High Court).Restrictive trade practices. *See* **Restrictive trade practices** (Appeal to Court of Appeal by way of case stated).Arbitration. *See* **Arbitration** (Procedure).Case stated. *See* **Case stated** (Practice).Chancery Division. *See* **Practice** (Chancery Division).Commission of inquiry. *See* **Inquiry** (Commission of inquiry).

Committal—

Non-payment of judgment debt, for. *See* **Debt** (Non-payment of judgment debt—Committal—Order—Procedure).

Company—

Application for investigation by Board of Trade. *See* **Company** (Investigation by Board of Trade—Application for investigation—Procedure).

Compulsory purchase of land—

Authorisation. *See* **Compulsory purchase** (Authorisation—Procedure).

Contempt of court—

Application for committal order. *See* **Contempt of court** (Committal—Application).

Costs—

Generally. *See* **Costs**.House of Lords. *See* **House of Lords** (Costs—Procedure).

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Legal aid. *See* **Legal aid** (Taxation of costs—Procedure).Court-martial. *See* **Court-martial** (Procedure).Crown Court. *See* **Crown Court**.

Discharge of order—

Order for examination of officer of company—

Voluntary winding-up of company. *See* **Company** (Voluntary winding-up—Examination of officer of company etc—Application to discharge order—Procedure).Divisional Court. *See* **Divisional Court** (Practice).Divorce. *See* **Divorce** (Practice).Estate duty. *See* **Estate duty** (Practice).

Food and drugs—

Proceedings against third person under Food and Drugs Act 1955. *See* **Food and drugs** (Proceedings against third party—Procedure).High Court. *See* **Practice**.

Husband and wife—

Maintenance. *See* **Husband and wife** (Maintenance—Procedure).Industrial tribunal. *See* **Industrial tribunal** (Procedure).

Intervention by Queen's Proctor—

Application for costs against solicitors. *See* **Divorce** (Intervention—Queen's Proctor showing cause why a decree nisi should not be made absolute—Costs—Fault by solicitors).Juvenile court. *See* **Magistrates** (Juvenile court—Procedure).Magistrates' court. *See* **Magistrates** (Procedure).

Non-compliance with rules of procedure—

Court-martial—

Jurisdiction of High Court. *See* **Court-martial** (Procedure—Non-compliance with rules of procedure—Jurisdiction of High Court).Official referee. *See* **Practice** (Reference to referee).

Opposition to grant of new tenancy—

Business premises. *See* **Landlord and tenant** (Opposition to grant of new tenancy of business premises—Procedure).Originating summons. *See* **Originating summons**.

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Appeal from High Court to House of Lords. *See* **House of Lords** (Appeal from High Court—Patent appeal).

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Protected tenancy. *See* **Rent restriction** (Possession—Procedure).

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Citation—

Postal application. *See* **Probate** (Citation—Application for issue).Production of register of title to registered land. *See* **Land registration** (Production of register of title—Order for production—Procedure).

Queen's Bench Division—

Submission of list of authorities. *See* **Counsel** (Practice—Submission of list of authorities—Procedure in Queen's Bench Division).

Receiver—

Action against receiver. *See* **Receiver** (Action against receiver—Procedure).

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Divorce. *See* **Divorce** (Reconciliation).

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- Statutory nuisance—
 - Failure to comply with abatement notice. *See* **Nuisance** (Statutory nuisance—Abatement notice—Failure to comply—Complaint to justices—Procedure).
- Summary proceedings—
 - Application under s 17 of the Married Women's Property Act 1882—
 - Procedure by originating summons. *See* **Husband and wife** (Property—Summary proceedings—Application—Procedure by originating summons).
 - Possession of land. *See* **Land** (Summary proceedings for possession).
- Summons—
 - Date for hearing. *See* **Practice** (Chancery Division—Procedure summons—Hearing—Date).
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- Third party. *See* **Practice** (Third party procedure).
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 - Appeal from Minister to High Court—
 - Enforcement notice. *See* **Town and country planning** (Enforcement notice—Appeal from Minister to High Court—Procedure).
- Tribunal. *See* **Tribunal**.
- Wardship proceedings—
 - Proof of date of birth of the minor. *See* **Ward of court** (Application to make minor ward of court—Proof of date of birth of the minor—Procedure).
- Witnesses—
 - Calling of witnesses—
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- Interest. *See* **Interest** (Proceeds of sale).

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- Preservation of public order. *See* **Public order** (Preservation of public order on occasion of processions).

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- Breach of contract—
 - Tort. *See* **Tort** (Inducement to commit breach of contract).

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- Abortion—
 - Procuring drugs or instrument. *See* **Criminal law** (Abortion—Procuring drugs or instrument with intent to effect abortion).
- Commission of offence. *See* **Criminal law** (Aiding and abetting—Procuring commission of offence).
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- Mental defective. *See* **Criminal law** (Sexual intercourse—Mental defective—Procuring defective).
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 - Regulation. *See* **Coal Mining** (Regulation of production).
- Documents—
 - Crown Privilege—
 - Power of Rules Committee to making rules relating to production and Crown Privilege. *See* **Statutory instrument** (Rules of court—Power of Rules Committee—Power to make rule relating to production of documents and Crown Privilege).
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 - Generally. *See* **Discovery** (Production of documents).

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- Description—
 - Passing off. *See* **Passing off** (Professional description).
- Income tax. *See* **Income tax** (Profits—Profession or vocation).
- Professional privilege—
 - Legal profession. *See* **Privilege** (Legal professional privilege).
- Trade or business—
 - False trade description. *See* **Trade description** (False or misleading statement as to services etc—Statement in the course of any trade or business).

PROFESSIONAL ADVICE

- Negligence—
 - Reliance on skill and judgment. *See* **Negligence** (Information or advice—Reliance on skill and judgment—Professional advice).

PROFESSIONAL INDEMNITY INSURANCE

- See* **Insurance** (Liability insurance—Professional indemnity insurance).

PROFESSIONAL MAN

- Negligence—
 - Manslaughter. *See* **Criminal law** (Manslaughter—Negligence—Professional man).

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Counsel—

Gambia. *See* **Gambia** (Counsel—Professional misconduct).Generally. *See* **Counsel** (Professional misconduct).Dentist. *See* **Dentist** (Professional misconduct).Medical practitioner. *See* **Medical practitioner** (Professional misconduct).

Solicitor—

Disciplinary proceedings. *See* **Solicitor** (Disciplinary proceedings).Negligence. *See* **Solicitor** (Negligence).Veterinary surgeon. *See* **Veterinary surgeon** (Discipline—Professional misconduct).**PROFESSIONAL NEGLIGENCE**Solicitor. *See* **Solicitor** (Negligence).**PROFESSIONAL PERSON**Negligence. *See* **Negligence** (Professional person).**PROFESSIONAL PRIVILEGE**Legal profession. *See* **Privilege** (Legal professional privilege).**PROFESSIONAL SOCIETY**

Rules of conduct—

Restraint of trade. *See* **Restraint of trade by agreement** (Professional society).**PROFESSIONAL SPORTSMAN**

Income tax—

Collections for meritorious performances. *See* **Income tax** (Emoluments from office or employment—Voluntary payment—Payment arising in ordinary course of taxpayer's employment—Professional cricketer—Collections made for meritorious performances).Proceeds of benefit match. *See* **Income tax** (Emoluments from office or employment—Payment arising in ordinary course of taxpayer's employment—Professional football players—Proceeds of benefit matches or payments in lieu thereof).

Testimonial payment—

Footballer. *See* **Income tax** (Emoluments from office or employment—Receipt 'from' employment—Testimonial).

Signing-on fee—

Income tax—

Capital or income. *See* **Income tax** (Capital or income receipts—Professional sportsman).**PROFESSIONAL TRUSTEE**Remuneration. *See* **Trust and trustee** (Remuneration of trustee—Professional trustee).**PROFIT À PRENDRE**

Abandonment—

Right of common. *See* **Commons** (Right of common—Abandonment).

Contract of sale—

Illegality—

Enforceability of contract—Dishonest motive of vendor—Innocence of purchaser. *See* **Contract** (Illegality—Enforceability of contract—Dishonest motive of vendor—Innocence of purchaser—Sale of profit à prendre).

Coal—

Acquisition of sea-borne coal from foreshore. *See* **Foreshore** (Rights over foreshore—Acquiring seaborne coal).Easement distinguished. *See* **Easement** (Distinction from profit à prendre).

Extent of profit à prendre—

Profit appurtenant—

Extent of right related to nature of dominant tenement—Profit unlimited in scope—Express grant—Right of pasture—Sheep rights—Right to graze unlimited as to number of sheep and period of grazing—Right in severalty appurtenant to dominant tenement created by express grant—Whether right capable of subsisting as a profit appurtenant. **Anderson v Bostock** [1976] 1 560, ChD.

Oral grant—

No memorandum in writing—

Action in trespass by grantee—Possession and part performance by grantee—Whether grantee entitled to maintain action in trespass. **Mason v Clarke** [1955] 1 914, HL.

Prescription—

Lost modern grant—

Right of common. *See* **Commons** (Right of common—Creation).

Sheep rights—

Right of pasture—Continuity of user—Evidence not showing sufficient continuity of user. **White v Taylor** (No 2) [1968] 1 1015, ChD.

Sheep rights—

Access—

Watering sheep—Water from well—Right to place troughs for watering sheep on waste land—Necessary access only, but with vehicles where necessary. **White v Taylor** (No 2) [1968] 1 1015, ChD.

Right of pasture—

Extent of right. *See* **Extent of profit à prendre, ante**.

Grant on sale by auction of lands in single ownership—Former waste land of manor—

Construction of grants—Reference to particulars and conditions of sale—Extrinsic evidence where latent ambiguity in particular wording—Apportionment of sheep rights when lot sold at auction no longer held in single ownership—General words in conveyances—Conveyancing Act 1881, s 6. **White v Taylor** (No 2) [1968] 1 1015, ChD.

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Excess profits tax. *See* **Excess profits tax**.

Income tax. *See* **Income tax (Profits)**.

Obtained by servant dishonestly. *See* **Master and servant** (Profits obtained by servant dishonestly by virtue of employment).

PROFITS TAX

Allowance—

Industrial building or structure—

Annual allowance for dwelling-house built for and occupied by men at colliery—Buildings likely to have no value at date when mine worked out—Buildings having substantial value if mining ceased at the time of assessment—Income Tax Act 1945, s 8(3), proviso. **National Coal Board v Inland Revenue Comrs** [1957] 2 461, HL.

Appeal—

Appeal by company against assessments to profits tax and excess profits tax—

Order for rehearing of appeal of director against Sch E assessment—Success of director's appeal would destroy substructure of assessment on company—Appeals by company remitted to be heard by same panel of commissioners as director's appeal. **Rose v Humbles (Inspector of Taxes)** [1970] 2 519, ChD.

Case stated—

Appeal from income tax commissioners—Dismissal of appeals by consent. **Practice Note** [1956] 1 880, ChD.

Chargeable accounting period—

Determination by Inland Revenue Commissioners—

Interval between company's old and new businesses—Commencement of business as investment company—Last chargeable accounting period—Period before interval—Finance Act 1937, ss 19(4), 20(2)(a) (b)—Finance Act 1947, s 35(1)(c). **EYL L Trading Co Ltd v Inland Revenue Comrs** [1962] 3 303, CA.

Last period of company—

Investment company's voluntary winding-up—No longer investment company after winding-up resolution—Finance Act 1937, s 19(4). **Inland Revenue Comrs v Olive Mill Ltd (in liquidation)** [1963] 2 130, ChD.

Computation of profits—

Accountancy method—

Valuation of work in progress. **Ostime (Inspector of Taxes) v Duple Motor Bodies Ltd** [1961] 2 167, HL.

Deduction—

Capital expenditure—Payments under lease—Payments for right of entry and compensation for damage—Opencast coal mining—Transient and recurrent operation—Income Tax Act 1952, s 137. **HJ 152 Rorke Ltd v Inland Revenue Comrs** [1960] 3 359, ChD.

Capital expenditure—Premiums on grant of leases—Oil company—Tied service stations—Lease of premises to oil company for premium—Sub-lease back to proprietor at nominal rent—Covenants binding proprietor to use company's oil—Deductibility of premium in computing company's profits—Income Tax Act 1952, s 137(f). **Regent Oil Co Ltd v Strick (Inspector of Taxes)** [1965] 3 174, HL.

Director's remuneration—Controlling interest of directors—Directors not holding majority of shares—Majority of shares held by another company—Director owning majority of shares of that company—Effect of register of members—Finance Act 1937, Sch 4, para 11—Finance Act 1952, s 34. **S Berendsen Ltd v Inland Revenue Comrs** [1957] 2 612, CA.

Director's remuneration—Controlling interest of directors—Shares registered in name of custodian trustee—Finance Act 1937, Sch IV, para 11. **Inland Revenue Comrs v Silverts Ltd** [1951] 1 703, CA.

Interest payable out of the profits—Interest on cumulative income stock—Interest payable 'to the extent to which the net profits... shall be sufficient'—Deficiency out of net profits of succeeding years 'if and so far as the same shall suffice'—Finance Act 1937, Sch IV, para 4. **Inland Revenue Comrs v Pullman Car Co Ltd** [1954] 2 491, ChD.

Money wholly and exclusively laid out or expended for the purposes of trade—Racecourse Betting Control Board—Whether payments made as working expenses or as statutory distributions of surplus deductible where board's business beneficial—Racecourse Betting Act 1928, s 3(6)—Income Tax Act 1952, s 137(a). **Racecourse Betting Control Board v Young (Inspector of Taxes)** [1959] 2 215, HL.

Rent—Company holding 88 year lease of premises—Scheme to acquire freehold—Subsidiary becoming freeholder—Freeholder becoming lessee for 22 years—Company becoming sub-lessee—Company's higher rent for shorter period—No deduction of increase of rent—Payment for acquisition of capital asset (freehold)—Income Tax Act 1952, s 137(a) (f). **Littlewoods Mail Order Stores Ltd v McGregor (Inspector of Taxes)** [1969] 3 855, CA.

Rentcharge—Whether income or capital payments—Rentcharges given as consideration for lessee's purchase of lessor's interest—Purchaser a property investment company—Whether rentcharges allowable deduction in computing lessee's profits for profits tax purposes—Income Tax Act 1952, s 177. **Inland Revenue Comrs v Land Securities Investment Trust Ltd** [1969] 2 430, HL.

Trade expenses—Asset constituting stock-in-trade—Price or value at date of acquisition—Hotel bought by property developer—Negotiated price £72,000—Value at time £150,000—Conveyance direct to own company at £72,000—Finding of commercial acquisition by company—Not a gift by developer to company—Price not value deductible. **Jacgilden (Weston Hall) Ltd v Castle (Inspector of Taxes)** [1969] 3 1110, ChD.

Franked investment income—

Dividends from subsidiary company—'Functions' of company alleged to consist wholly of holding property—Colliery company's undertaking nationalised—Subsequent activities devoted to obtaining compensation pending liquidation—Whether company carrying on a trade or business—Finance Act 1937, s 19(4). **Henry Briggs Son & Co Ltd (in voluntary liquidation) v Inland Revenue Comrs** [1960] [1961] 1 220, HL.

PROFITS TAX (cont)**Computation of profits (cont)—****Income received from investments or other property—**

Income excluded from computation—Income received from dividends from 'a body corporate carrying on a trade or business' to which statutory provision applicable—Companies ceasing to trade before distributing dividends—Finance Act 1937, Sch 4, para 7(1)(a)—Finance Act 1947, s 32(1). **Inland Revenue Comrs v Clifforia Investments Ltd** [1963] 1 159, ChD.

Profits of trade or business—

Income received from investments or other property—Nationalisation of colliery undertaking—Interim income payments pending satisfaction of compensation—Cesser of colliery trade—Continuance of other separate trades—Finance Act 1937, Sch IV, para 7 (as amended by Finance Act 1947, s 32(1))—Coal Industry Nationalisation Act 1946, s 22(2) (3)—Coal Industry (No 2) Act 1949, s 1(2). **Inland Revenue Comrs v Butterley Co Ltd** [1956] 2 197, HL.

Property dealing company—

War damage value payments—Whether to be included in computing profits of company. **London Investment & Mortgage Co Ltd v Worthington (Inspector of Taxes)** Same [1958] 2 230, HL.

Trading receipts—

Insurance premiums—Return of excess of premiums—Share of surplus assets of mutual insurance company on winding-up—Whether income or capital receipt. **Stafford Coal & Iron Co Ltd v Brogan (Inspector of Taxes)** [1963] 3 277, HL.

Corporation profits tax—

Hong Kong. *See* **Hong Kong** (Corporation profits tax).

Distribution—**Director-controlled company—**

Payments to a director for manufacture and sale of patented article under licence from the director, the patentee—Full consideration received by company—Whether payments were amounts applied by way of remuneration, loans or otherwise for the benefit of any person—Finance Act 1947, s 36(1). **Inland Revenue Comrs v H Dunning & Co (1946) Ltd** [1960] 3 75, ChD.

Distribution charge—

Reconstruction—Vendor company's business sold in 1950 in consideration of shares in purchasing company—Subsequent sale by vendor company of shares of purchasing company—Liquidation of vendor company in 1955—Liability to distribution charge—Finance Act 1947, ss 30, 36(4), 43(1). **Inland Revenue Comrs v JB Hodge & Co (Glasgow) Ltd (in voluntary liquidation)** [1961] 3 172, HL.

Exclusion of sums applied in reducing share capital—

Redemption of preference shares—Price equal to nominal amount of shares plus a premium—Whether 'sum applied in reducing share capital'—Finance Act 1947, s 36(1), proviso. **Inland Revenue Comrs v Universal Grinding Wheel Co Ltd** [1955] 2 29, HL.

Gross relevant distribution—

Repayment or return of share capital—Exclusion of distribution of capital—Company in voluntary liquidation—Transfer of assets to new company—Balance less expenses paid to shareholders—Finance Act 1947, s 35(1)—Finance Act 1951, s 31(1), (5). **Inland Revenue Comrs v Pollock & Peel Ltd (in liquidation)** [1957] 2 483, CA.

Repayment or return of share capital—Exclusion of distribution of capital—Company in voluntary liquidation—Transfer of assets to new company—Direction that profits tax be computed as if capital not previously increased—Validity—Finance Act 1937, s 20(2)(b)—Finance Act 1947, ss 35(1)(c), 36(4)—Finance Act 1951, s 32(1)(3)(4). **Ackland & Pratten Ltd (in liquidation) v Inland Revenue Comrs** [1960] 3 367, ChD.

Meaning—

Capital profits dividend—Whether 'distribution' including capital profits dividend—Finance Act 1947, s 36(1). **Inland Revenue Comrs v Bell and Nicolson Ltd** [1952] 1 428, ChD.

Net relevant distributions—

Trading loss—Gross relevant distributions made—Franked investment income less than amount of trading loss but exceeding gross relevant distributions—Whether there were net relevant distributions liable to distribution charge—Finance Act 1947, s 34(2)—Finance Act 1937, Sch 4, para 7 (1A) (substituted by Finance Act 1947, s 32(1)). **Inland Revenue Comrs v South Georgia Co Ltd** [1958] 1 593, HL.

Exemption—**Principal company subject to surtax direction—**

Notice requiring profits of subsidiary to be treated as profits of principal company—Exemption of subsidiary company—Finance Act 1937, s 22(1)(2). **Heellex Investments Ltd v Inland Revenue Comrs** [1955] 1 641, CA.

Statutory undertaker—

Authorised person limited by enactment as regards charge for service—Carriage of passengers by road—Taxi-cab proprietors—Cabs licensed under statute—Maximum fares prescribed—Relationship between driver and company that of bailee and bailor of cab—Finance Act 1937, s 19(5). **London General Cab Co Ltd v Inland Revenue Comrs** [1950] 2 566, ChD.

PROFITS TAX (cont)

Relief—

Double taxation agreements with other countries—

Allowance of overseas tax as credit against United Kingdom profits tax—Relief not to exceed amount of profits tax—Companies—Grouping notice—Effect—Principal company trading in United Kingdom—Subsidiary companies also trading in United Kingdom—Principal company making United Kingdom losses—Subsidiary companies making United Kingdom profits—Overseas dividends and trading income of principal company exceeding United Kingdom losses—Principal company giving 'grouping notice' in respect of all subsidiaries—Method of computing entitlement to relief for profits tax having regard to grouping notice—Whether relief computed by reference to profits tax on income of principal company and subsidiaries or of principal company only—Finance Act 1937, s 22—Income Tax Act 1952, s 347(2), Sch 16. *Inland Revenue Comrs v Babcock & Wilcox Ltd* [1971] 3 1335, ChD.

Non-distribution relief—

Company ordinarily resident both within and outside the United Kingdom—Finance Act 1947, s 39(1). *Union Corp Ltd v Inland Revenue Comrs* [1953] 1 729, HL.

Subsidiary company—

Principal company's notice that subsidiary's profits to be treated as principal's—

Determination by winding-up of principal company—Finance Act 1937, s 22(1). *Inland Revenue Comrs v Olive Mill Ltd (in liquidation)* [1963] 2 130, ChD.

Principal company's notice that subsidiary's profits to be treated as principal's—

Tax paid by virtue of notice—Whether whole tax paid by principal paid by virtue of the notice. *Chloride Batteries Ltd v Gahan (Inspector of Taxes)* [1956] 1 828, HL.

Transitional relief on supersession of income tax and profits tax by corporation tax—

Existing companies with overseas trading income. *See* **Income tax** (Corporation tax—Transitional relief—Company with overseas trading income).

PROHIBITED GOODSImportation. *See* **Customs and excise** (Importation of prohibited goods).**PROHIBITION**

Arbitrator—

Power of court to issue order directed to private arbitrator—

Circumstances in which power exercisable. *R v Disputes Committee of the National Joint Council for the Craft of Dental Technicians, ex parte Neate* [1953] 1 327, QBD.

Costs. *See* **Costs** (Prohibition).Crown Court. *See* **Crown Court** (Supervisory jurisdiction of High Court—Orders of mandamus, prohibition and certiorari).

Grant—

Grant where right of appeal—

Co-existence of right of appeal and right to order of prohibition—Patents Act 1949, s 44(1). *R v Comptroller-General of Patents, ex parte Parke, Davis & Co* [1953] 1 862, QBD.

Justices—

Right to issue—

Prohibition against proceeding in excess of jurisdiction—Right where case stated for opinion of High Court on question of jurisdiction. *R v Wimbledon Justices, ex parte Derwent* [1953] 1 390, QBD.

Locus standi of applicant—

Application to prevent local authority misusing powers—

Film censorship—Local authority permitting exhibition of films contrary to law—Application by resident in area of local authority—Resident's wife a ratepayer—Whether resident having sufficient locus standi to apply for order of prohibition—Whether court having power to prevent local authority misusing powers. *R v Greater London Council, ex parte Blackburn* [1976] 3 184, CA.

Rent tribunal—

Prohibition against proceeding in excess of jurisdiction—

Circumstances in which appropriate to apply for prohibition—When application for prohibition should be made. *R v Tottenham and District Rent Tribunal, ex parte Northfield (Highgate) Ltd* [1956] 2 863, QBD.

PROHIBITION NOTICEStatutory nuisance. *See* **Nuisance** (Statutory nuisance—Prohibition notice).**PROMISE**

Enforcement—

Intention to create legal relationship. *See* **Contract** (Intention to create legal relationship—Promise—Enforcement).

PROMISSORY ESTOPPEL*See* **Estoppel** (Promissory estoppel).**PROMISSORY NOTE**Generally. *See* **Bill of exchange** (Promissory note).Implied indemnity. *See* **Indemnity** (Implied indemnity—Promissory note).

Liability—

Payment made to third party. *See* **Money** (Promissory note).Rate of exchange. *See* **Money** (Currency—Rate of exchange—Promissory notes payable in Turkish gold pounds).

Sale of land—

Conditional contract. *See* **Sale of land** (Contract of sale—Conditional contract—Promissory note).

Stamp duty. *See* **Stamp duty** (Promissory note).

ROOF

- Adultery—
 - Divorce. *See* **Divorce** (Adultery—Proof).
- Bankruptcy, in. *See* **Bankruptcy** (Proof).
- Burden of proof—
 - Criminal proceedings. *See* **Criminal evidence** (Burden of proof).
 - Customs or excise proceedings—
 - Improper importation of goods—Forfeiture of goods. *See* **Customs and excise** (Forfeiture—Imported goods—Goods on which duty chargeable and unpaid—Onus of proof).
 - Direction to jury. *See* **Jury** (Direction to jury—Burden of proof).
 - Life tenant—
 - Continuance of life. *See* **Trust and trustee** (Life interest—Continuance of life of life tenant—Burden of proof).
- Condonation—
 - Divorce. *See* **Divorce** (Condonation—Evidence).
- Contempt of court—
 - Civil contempt. *See* **Contempt of court** (Proof).
- Cruelty—
 - Divorce. *See* **Divorce** (Cruelty—Standard of proof).
- Detinue. *See* **Detinue** (Proof).
- Written statement, by—
 - Criminal proceedings. *See* **Criminal evidence** (Written statement).

PROPER LAW

- Contract, of. *See* **Conflict of laws** (Contract—Proper law of contract).
- Settlement, of. *See* **Conflict of laws** (Settlement—Proper law of settlement).

PROPERTY

- Adjustment order—
 - Divorce. *See* **Divorce** (Property—Adjustment order).
- Business premises—
 - Lease. *See* **Landlord and tenant** (Business premises).
- Club—
 - Members' club. *See* **Club** (Members' club—Property of club).
- Contributions to acquisition of property—
 - Contributions to household expenses—
 - Unmarried couple—Constructive trust. *See* **Trust and trustee** (Unmarried couple—Contributions to acquisition of property—Contributions to household expenses).
- Conveyance—
 - Fraud. *See* **Fraudulent conveyance**.
- Criminal damage. *See* **Criminal law** (Damage to property).
- Development—
 - Planning control. *See* **Town and country planning** (Development).
- Disposition—
 - Avoidance of—
 - Company winding-up. *See* **Company** (Compulsory winding-up—Avoidance of disposition of property after commencement of winding-up).
- Distribution—
 - Bankruptcy. *See* **Bankruptcy** (Distribution of property).
- Divorce—
 - Adjustment order. *See* **Divorce** (Property—Adjustment order).
- Enemy property—
 - Custody. *See* **Trading with the enemy** (Custody of enemy property).
 - Generally. *See* **Enemy** (Enemy property).
- Estate duty—
 - Property passing on death. *See* **Estate duty** (Property deemed to pass on death).
- Fraudulent conveyance. *See* **Fraudulent conveyance**.
- Fraudulent misapplication of public or service property—
 - Person subject to military law, by. *See* **Court-martial** (Offences relating to property—Fraudulent misapplication of public or service property).
- Highway, adjoining—
 - Damage to. *See* **Highway** (Damage to property adjoining highway).
- Husband and wife. *See* **Husband and wife** (Property).
- Joint tenancy. *See* **Joint tenancy**.
- Land—
 - Sale. *See* **Sale of land**.
 - Summary proceedings for possession. *See* **Land** (Summary proceedings for possession).
- Leasehold—
 - Generally. *See* **Landlord and tenant**.
- Legitimated person—
 - Right to take interests in property. *See* **Legitimation** (Right of legitimated person to take interests in property).
- Local authority. *See* **Local authority** (Property).
- Long lease—
 - Acquisition of freehold or extended lease. *See* **Landlord and tenant** (Leasehold enfranchisement).
- Matrimonial home. *See* **Husband and wife** (Matrimonial home).
- Members' club. *See* **Club** (Members' club—Property of club).
- Mental patient. *See* **Mental health** (Patient's property).
- Mortgage. *See* **Mortgage**.
- Obtaining by deception. *See* **Criminal law** (Obtaining property by deception).

PROPERTY (cont)

Ownership of—

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Particulars. *See* **Pleading** (Particulars—Ownership of property).Prisoner. *See* **Prison** (Property of prisoner).

Property situate out of Great Britain—

Estate duty—

Exemption. *See* **Estate duty** (Exemption—Property situate out of Great Britain).Rates. *See* **Rates**.

Recovery—

Compensation for work done on property by another. *See* **Restitution** (Unjust enrichment—Compensation—Work done on property of another).Restraint on alienation. *See* **Restraint on alienation**.Restrictive covenant affecting land. *See* **Restrictive covenant affecting land**.

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Profits derived from sale—

Income tax—New Zealand. *See* **New Zealand** (Income tax—Profits or gains derived from sale of property).

Settlement—

Capital gains tax. *See* **Capital gains tax** (Settlement).Divorce. *See* **Divorce** (Settlement of wife's property).Succession duty. *See* **Succession duty**.

Title to—

Pipes laid in servient land pursuant to easement. *See* **Easement** (Pipes—Right to lay and maintain pipes on servient land).Royal palace at Lagos. *See* **Nigeria** (Title to property—Royal palace at Lagos).

Transfer—

Dis-establishment of Church in Wales, on. *See* **Ecclesiastical law** (Church in Wales—Dis-establishment—Transfer of property).

Husband and wife—

Divorce. *See* **Divorce** (Property—Adjustment order—Transfer of property).Reconstruction of company. *See* **Company** (Reconstruction—Transfer of property and liabilities to another company).

Transfer of property—

Sale of goods. *See* **Sale of goods** (Passing of property).

Unmarried couple—

Joint contributions. *See* **Trust and trustee** (Constructive trust—Unmarried couple).

Unoccupied—

Rating. *See* **Rates** (Unoccupied property).

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Will—

Valuation of effects. *See* **Will** (Valuation of effects—Probate valuation).**PROSECUTION**

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Want of—

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Imputation on character of prosecutor or witness).

Malicious. *See* **Malicious prosecution**.

Notice of intended prosecution—

Motoring offences. *See* **Road traffic** (Notice of intended prosecution).Road traffic offence. *See* **Road traffic** (Offence—Prosecution).

Time limit—

False trade description. *See* **Trade description** (False trade description—Time limit for prosecutions).Offence under factories legislation. *See* **Factory** (Offence—Prosecution—Time limit).Sale of goods at price exceeding statutory maximum permitted price. *See* **Price control** (Sale of goods at price exceeding statutory maximum permitted price—Prosecution—Time limit within which summary proceedings may be brought).Trial. *See* **Criminal law** (Trial—Prosecution).**PROSECUTOR**

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Criminal liability for false statement. *See* **Criminal law** (Company—False statement—Prospectus).Generally. *See* **Company** (Prospectus).**PROSTITUTION**Criminal offences relating to prostitution. *See* **Criminal law** (Prostitution).

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Adultery—

What amounts to adultery. *See* **Divorce** (Adultery—What constitutes—Prostitution).

Use of premises for—

Nuisance. *See* **Nuisance** (Prostitution—Use of premises for prostitution).

PROTECTED LIFE INTEREST

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PROTECTED TENANCY

Generally. *See* **Rent restriction**.

PROTECTION AGAINST WEATHER

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PROTECTION OF ANIMALS

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PROTECTIVE APPLIANCE

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PROTECTIVE TRUST

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Effect where protective trust to endure only while life tenant remained widower but widower remarried and second marriage was declared null. *See* **Will** (Gift—Gift during widowhood—Decree of nullity in respect of second marriage).

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Election against will—Liability to compensate disappointed beneficiaries. *See* **Equity** (Election—Election against will—Effect—Protected life interest).

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Industrial and provident societies. *See* **Industrial and provident societies**.

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Driving licence—

Conditions attached. *See* **Road traffic** (Driving licence—Conditions attached to provisional licences).

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Criminal charge—

Defence. *See* **Criminal law** (Provocation as a defence).

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Company meeting. *See* **Company** (Meeting—Proxy).

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Evidence as expert—

Criminal proceedings. *See* **Criminal evidence** (Expert evidence—Psychiatrist).

See **Evidence** (Expert witness—Psychiatrist). *See* **Evidence** (Expert witness—Psychiatrist).

PUBLIC AUTHORITY

Act done in pursuance of public duty or authority—

Public duty or authority—

Local authority providing public swimming baths—Accident—Whether local authority in providing swimming bath acting 'in pursuance of any public duty or authority'—Solicitor and client costs—Public Authorities Protection Act 1893, s 1(b)—Public Health (London) Act 1936, s 167. *Clarke v Bethnal Green Borough Council* [1939] 2 54, KBD.

Compulsory acquisition of land, by—

Assessment of compensation. *See* **Compulsory purchase** (Compensation—Assessment—Land acquired by public authority).

Contract not to exercise statutory powers. *See* **Statutory powers**—Contract not to exercise, *post*.

Corruption of officer or employee. *See* **Criminal law** (Corruption).

Discretionary powers. *See* **Statutory powers**—Discretionary powers, *post*.

Excessive exercise of powers. *See* **Statutory powers**—Excessive exercise of statutory powers, *post*.

India—

Act of state. *See* **India** (Public authorities—Acts of state).

Limitation of action—

Act done in execution of statute or of public duty or authority—

Act done by person—Bank of England—Register of securities—Act done in intended execution of an Act of Parliament—Removal of name from register—Refusal to restore—Date from which time runs—Limitation Act 1939, s 21(1). *Welch v Bank of England (Francis & Praed, third parties)* [1955] 1 811, ChD.

PUBLIC AUTHORITY (cont)

Limitation of action (cont)—

Act done in execution of statute or of public duty or authority (cont)—

Action for negligence against medical officers of county hospital—Writ issued more than six months after date when cause of action accruing—Whether medical officers entitled to protection of Act—Public Authorities Protection Act 1893, s 1. **Nelson v Cookson** [1939] 4 30, KBD.

Action for negligence against medical specialist at hospital administered by hospital board—Writ issued more than a year after date when cause of action accruing—Whether treatment given by specialist 'act done in execution of public duty'—Whether specialist entitled to protection of Limitation Act 1939, s 21(1). **Higgins v North West Metropolitan Regional Hospital Board** [1954] 1 414, QBD.

Action for negligence against specialist at hospital administered under the National Health Service—Writ issued more than one year after date when cause of action accruing—Whether specialist acting in execution of statute—Whether within protection of—Limitation Act 1939, s 21(1). **Razzel v Snowball** [1954] 3 429, CA.

Commissioner of Metropolitan Police—Dismissal of police officer—Claim by officer that dismissal illegal—Claim in respect of acts done more than year before writ issued—Limitation Act 1939, s 21. **Hogg v Scott** [1947] 1 788, KBD.

Governors of grammar school—Pupil slipping on worn step on snowy day—Infancy of plaintiff—Action brought more than year from date cause of action accrued—Whether governor 'public authority' within protection of Public Authorities Protection Act 1893, s 1—Limitation Act 1939, ss 21, 22. **Woodward v Mayor of Hastings** [1944] 2 565, CA.

One year limitation period—Exception where act, neglect or default continuing one—Catchment board—Cleansing watercourse—Dredgings deposited on bank—Plaintiff's bridge destroyed three years later owing to diversion of flood waters—Date on which cause of action accrued—Limitation Act 1939, s 21(1). **Marriage v East Norfolk Rivers Catchment Board** [1949] 2 1021, CA.

Prisoner on remand provided with furnished cell in pursuance of contract with prison commissioners—Injury suffered through alleged defect in china chamber provided—Whether prison commissioners a public authority—Prison Act 1877, ss 6, 9, 39—Public Authorities Protection Act 1893, s 1—Prison Rules 1933 (S R & O 1933 No 809), r 122. **Jacoby v Prison Comrs** [1940] 3 506, CA.

Public—Harbour board—Action under power to carry on trade of wharfingers and warehousemen—Trade not subsidiary to main purpose of managing and controlling harbour—Straits Settlements Public Authorities Protection Ordinance (Revised Laws 1936, s 2(2), as amended by Public Authorities Protection (Amendment) Ordinance 1939, s 2—Limitation Act 1939, s 21(1). **Firestone Tire and Rubber Co (SS) Ltd v Singapore Harbour Board** [1952] 2 219, PC.

Public authority—Railway company—Whether railway company a 'public authority'—Public Authorities Protection Act 1893, s 1. **Swain v Southern Ry Co** [1939] 2 794, CA.

Public duty—School managers and headmistress—Injury to child through want of supervision—Writ issued more than six months later—Whether school managers and headmistress within protection of statute—Public Authorities Protection Act 1893, s 1—Education Act 1921, ss 29, 30, 31. **Greenwood v Atherton** [1938] 4 686, CA.

Public duty or authority—Agreement to augment teachers' war service pay—Limitation Act 1939, s 21(1)—Local Government Staffs (War Service) Act 1939, s 1(1). **Turburville v West Ham Corpn** [1950] 2 54, CA.

Soldier on duty—Member of Canadian forces—Action for damages for personal injuries brought against him more than year after date when cause of action accrued—Whether member of Canadian forces in same position as member of home forces—Visiting Forces (British Commonwealth) Act 1933, s 2(3)(b)—Limitation Act 1939, s 21(1). **Reeves v Deane-Freeman** [1953] 1 461, CA.

Statute giving local authority power to erect pavilion—Entertainment pavilion erected and carried on by local authority—Plaintiff injured by falling poster-frame—Writ issued more than six months after accident—Whether local authority within protection of Public Authorities Protection Act 1893, s 1. **Hawkes v Torquay Corpn** [1938] 4 16, Assizes.

Steamship requisitioned by Minister of War Transport operating on charter—Loss of commercial cargo by fire—Alleged negligence of Minister's officers in loading and discharge of cargo—Whether acts done in execution of public duty or authority—Limitation Act 1939, s 21. **Western India Match Co Ltd v Lock** [1946] 2 227, KBD.

Claim for contribution by joint tortfeasor—

Commencement of period of limitation—Length of period—Law Reform (Married Women and Tortfeasors) Act 1935, s 6(1)(c)—Limitation Act 1939, ss 2(1), 21(1)—R S C Ord 16A, r 1. **George Wimpey & Co Ltd v British Overseas Airways Corpn** [1954] 3 661, HL.

Justices' protection—

Action against justices for false imprisonment—Plaintiff committed to prison for failure to comply with maintenance order—Order made without jurisdiction—Last period of imprisonment ending in 1945—Order discharged in October 1954—Action commenced in December 1954—Justices Protection Act 1848, s 2—Limitation Act 1939, s 21(1). **O'Connor v Isaacs** [1956] 2 417, CA.

Order for maintenance of wife—Marriage polygamous or potentially so—Magistrate acting within jurisdiction in issuing summons—No duty then to inquire on his own into alleged facts on which summons based—Evidence of complainant that she was married—Respondent not present at hearing—Subsequent enforcement of maintenance order by attachment of earnings—Whether magistrates protected—Justices Protection Act 1848, s 1—Maintenance Orders Act 1958, s 6(1). **Sammy-Joe v G P O Mount Pleasant Office** [1966] 3 924, ChD.

PUBLIC AUTHORITY (cont)

Limitation of action (cont)—

Neglect or default in execution of statutory public duty or authority—

Failure to pay fees of registration officer—Action for fees as registration officer—Action brought more than one year after completion of register—Whether payment in execution of statute—Limitation Act 1939, s 21. **Mountain v Bermondsey Borough Council** [1941] 3 498, KBD.

Wheat Commission—

Recovery of quota payments made to Wheat Commission. *See* **Agriculture** (Wheat—Quota payments)—Recovery of payments made to Wheat Commission—Payments made more than six months before commencement of action).

Local authority. *See* **Local authority**.

Meeting—

Admission of public—

Resolution to exclude public—Reason for exclusion—Special reason arising from nature of business or of proceedings—Accommodation for public at place of meeting—Lack of accommodation—Reasonable provision made to accommodate public—Unexpectedly large numbers wishing to attend meeting—Resolution by body to exclude all members of public rather than select some to fill available seats—Whether a reason 'arising from the nature of [the] business or of the proceedings'—Whether resolution valid—Public Bodies (Admission to Meetings) Act 1960, s 1(2). **R v Liverpool City Council, ex parte Liverpool Taxi Fleet Operators' Assn** [1975] 1 379, QBD.

Resolution to exclude public—Reason for reason stated in the resolution—Failure of body to state reason in resolution—No-one suffering injury in consequence of failure—Whether requirement the reason be stated in resolution mandatory or directory—Whether resolution valid—Public Bodies (Admission to Meetings) Act 1960, s 1(2). **R v Liverpool City Council, ex parte Liverpool Taxi Fleet Operators' Assn** [1975] 1 379, QBD.

Minister—

Judicial control. *See* **Statutory powers**—Duty of Minister, *post*.

Natural justice. *See* **Natural justice** (Public authority).

Staff—

Superannuation—

War bonus—Whether included in calculation of pension. **Tibbals v Port of London Authority** [1937] 2 413, HL.

Statutory powers—

Alternative or overlapping powers—

Town and country planning—Exercise of power under one statute carrying right to compensation—Exercise of power under another might not carrying compensation—Whether power carrying right to compensation should be exercised. **Westminster Bank Ltd v Minister of Housing and Local Government** [1970] 1 734, HL.

Contract not to exercise—

Option to purchase property—Consideration for option included covenant by local planning authority not to exercise statutory power of compulsory acquisition—Cricket field—Covenant ineffective in law—Contract granting option not reasonable bargain without effective covenant—Option unenforceable by local authority—Land charge in respect of option vacated. **Re Staines Urban District Council's Agreement** [1968] 2 1, ChD.

Discretionary powers—

Liability for non-feasance—Land drainage. **Smith v Cawdle Fen, Ely (Cambridge), Comrs** [1938] 4 64, KBD.

Duty of Minister—

Judicial control of executive discretion—Complaint by milk producers asking for reference to committee investigation—Discretion of Minister not expressly limited to enactment—Minister declining to refer complaint—Previous applications by producers to Milk Marketing Board unavailing—Producers in a minority on board—Whether mandamus would lie—Agricultural Marketing Act 1958, s 19(3). **Padfield v Minister of Agriculture, Fisheries and Food** [1968] 1 694, HL.

Excessive exercise of statutory powers—

Highway authority—Repair of road—Excessive exercise of statutory powers is not a ground for saddling a statutory authority with permanent obligation to maintain a road. **Alsager Urban District Council v Barratt** [1965] 1 889, QBD.

Fettering future exercise of statutory powers—

Exercise of existing powers fettering future exercise of powers—Creation of right extending over period of years—Restrictive covenant controlling use of land owned by authority—Lease of premises adjoining airfield owned by local authority—Covenant by authority to maintain airfield as municipal aerodrome—Whether covenant invalid as fettering exercise of statutory powers—Local Government Act 1933, s 163(1). **Dowty Boulton Paul Ltd v Wolverhampton Corpn** [1971] 2 277, ChD.

Interference with private rights in exercise of powers—

Damage to riparian owners—Possibility of alternative method—Onus of proof. **Provender Millers (Winchester) Ltd v Southampton County Council** [1939] 4 157, CA.

Erection of barrier along pavement in front of plaintiff's building—Nuisance—Invasion of private rights of property—Newcastle-upon-Tyne Improvement Act 1865, ss 22, 65. **Dormer v Newcastle-upon-Tyne Corpn** [1940] 2 521, CA.

Erection of bus-shelter—Interference with access to private premises—Permissive power—Authority acting reasonably—Swindon Corporation Act 1926, ss 21, 25. **Edgington, Bishop and Withy v Swindon Borough Council** [1938] 4 57, KBD.

Misuse of power—

Application for order of prohibition—Locus standi of applicant. *See* **Prohibition** (Locus standi of applicant—Application to prevent local authority misusing powers).

PUBLIC AUTHORITY (cont)

Statutory powers (cont)—

Misuse of power (cont)—

Exercise of power for unlawful purpose—Validity—Licence—Power to revoke licence—Threat to exercise power for unlawful purpose—Wireless telegraphy—Broadcast receiving licence—Colour television—Licence holder obtaining new licence before expiry of current licence—Purpose to avoid payment of increased statutory fee coming into force on date of expiry of existing licence—Home Office threatening to revoke new licence unless licence holder pay additional sum representing difference between increased fee and former fee—Home Office having no lawful authority to demand payment of additional sum—Whether threatened revocation of licence valid—Wireless Telegraphy Act 1949, s 1(4). *Congreve v Home Office* [1976] 1 697, QBD.

Order made under statutory power—

Subsequent statute conferring power to make similar order but subject to confirmation by Minister—Order made within scope of subsequent power but under previous statute and without confirmation—Whether order valid—Town Police Clauses Act 1847, s 21—Road Traffic Act 1930, s 46(1), (2)—Road and Rail Traffic Act 1933, s 29(4). *Brownsea Haven Properties Ltd v Poole Corp* [1958] 1 205, CA.

Transfer of officers—

Compensation—

Loss of office—Limit of amount of compensation—Annuity or lump sum—Option of officer—Pensions Commutation Acts 1871—1882—London Passenger Transport Act 1933, s 73 (6), Sch XIV. *Rich v London Passenger Transport Board* [1936] 1 912, CA.

Transfer of employee of London County Council tramways to London Passenger Transport Board—Weekly servant—Right to and assessment of compensation—Consideration of earnings since dismissal—London Passenger Transport Act 1933, s 73, Sch XIV, para 4(e). *Re An Arbitration between Perry and London Passenger Transport Board* [1939] 2 421, KBD.

Unreasonable exercise of functions—

Power of Secretary of State to intervene—

Local education authority. *See Education* (Local education authority—Power of Secretary of State to prevent unreasonable exercise of functions).

PUBLIC BODY

Officer or employee—

Corruption. *See Criminal law* (Corruption—Public body).

PUBLIC BUILDING

Removal of article from building. *See Criminal law* (Removal of articles from public building).

PUBLIC CARRIER'S LICENCE

Goods vehicle. *See Road traffic* (Goods vehicle—Public carrier's licence).

PUBLIC DECENCY

Act outraging public decency. *See Criminal law* (Public decency—Act outraging public decency).

Conspiracy to outrage public decency. *See Criminal law* (Conspiracy—Outrage to public decency).

PUBLIC DOCUMENT

Evidence—

Admissibility—

Hearsay evidence. *See Evidence* (Hearsay—Public documents).

PUBLIC EXAMINATION

Bankruptcy. *See Bankruptcy* (Public examination).

PUBLIC GOOD

Obscene publication—

Defence to criminal charge. *See Criminal law* (Obscene publications—Defence of public good).

PUBLIC HEALTH

Appeal to quarter sessions—

Right of appeal—

Person aggrieved—Costs not given to successful party before magistrates—Right of appeal against refusal of magistrates to grant costs—Public Health Act 1936, s 301. *R v Lancashire Quarter Sessions Appeal Committee, ex parte Huyton-with-Roby Urban District Council* [1954] 3 225, QBD.

Buildings—

Control of buildings—

Regulations—Breach of regulations—Notice requiring removal of structures—Validity—'Owner' of premises—Statement as to right of appeal—Need to state right to apply for extension of time—Statutory extension of time limit—Form of notice to owner—Service on owner—Wrongful removal of structures—Damages—Public Health Act 1936, ss 65(1)(3), 300(3), 343(1)—Building Restrictions (War-Time Contraventions) Act 1946, s 3(1). *Nalder v Ilford Corp* [1950] 2 903, KBD.

Restriction on erection of buildings—Buildings—Erection of advertisement hoarding near highway—Whether a 'building'—Surrey County Council Act 1931, s 67. *Super Sites Ltd v Keen* [1938] 2 471, KBD.

Temporary buildings—Movable structure—Converted omnibus—Motor lorry—Whether 'temporary buildings'—Public Health Acts Amendment Act 1907, s 27. *Gumbrell v Swale Rural District Council* [1936] 3 935, KBD.

PUBLIC HEALTH (cont)**Buildings (cont)—****Dangerous structures—**

Metropolis—Notice to take down, repair, or otherwise secure—Discretion of magistrate to order one of the three courses to be pursued—London Building Acts (Amendment) Act 1939, s 64. **Bewlay & Co Ltd v London County Council** [1953] 2 821, QBD.

Order to repair or demolish—Failure by owner to comply with order—Demolition carried out by local authority—Machinery removed from premises by local authority—Right to remove machinery—Whether 'rubbish resulting from the demolition' included machinery on the premises—Public Health Act 1936, s 58. **McVittie v Bolton Corpn** [1945] 1 379, CA.

Order to repair or demolish—Works of repair unspecified in order—Whether order defective—Public Health Act 1936, s 58. **R v Bolton Recorder, ex parte McVittie** [1939] 4 236, CA.

Paving and draining of yards and passages—

Passage giving access to a house—Path giving access to a house—Whether included in 'passage giving access to a house'—Public Health Act 1936, s 56(1). **Denton Urban District Council v Bursted Properties Ltd** [1955] 1 273, QBD.

Caravans. *See* Moveable dwellings, *post*.

Common lodging-house—**Registration—**

Letting at weekly rent in advance—Whether premises outside definition of common lodging-house—Public Health Act 1936, ss 235, 236. **People's Hostels Ltd v Turley** [1938] 4 72, KBD.

Drainage—**New buildings—**

Drainage of buildings in combination—Planning permission for new buildings subject to properties being connected to public sewer—Distance to main sewer more than one hundred feet—No resolution requiring connexion with main sewer passed—No undertaking given by local authority to bear cost of sewer beyond first hundred feet—Whether local authority liable to contribute to expenses of connexion—Public Health Act 1936, ss 37(1)(4), 38(1), (2). **Princes Investments Ltd v Frimley and Camberley Urban District Council** [1962] 2 104, QBD.

Satisfactory provision to be made for drainage of building—Drainage of the building—Drains of particular building—Public Health Act 1936, s 37(1). **Chesterton Rural District Council v Ralph Thompson Ltd** [1947] 1 273, KBD.

Dustbin. *See* Refuse—Notice requiring owner or occupier to provide dustbin, *post*.

Entry on premises—**Notice—**

Twenty-four hours' notice of intended entry—Letter stating intention to 'proceed under s 290(6) of the Public Health Act 1936', sent to occupier four months before entry—Whether notice of intended entry—Public Health Act 1936, s 287(1), proviso. **Stroud v Bradbury** [1952] 2 76, QBD.

Expenses—**Recovery—**

Expenses of maintenance of patient in hospital—Recovery from person legally liable to maintain patient—'If possessed of sufficient means'—Local Government Act 1929, s 16—Poor Law Act 1930, s 14. **Middlesex County Council v Nathan** [1937] 3 283, KBD.

Expenses of maintenance of patient in hospital—Right of action of local authority—Recovery of expenses—Claim against deceased's estate—Right of action in contract against deceased's husband—Whether expenses not recoverable from any other source—Public Health Act 1936, s 184(1). **Middlesex County Council v Kiverstein** [1942] 1 596, CA.

Jurisdiction of county court—Public Health Act 1936, ss 24, 293. **Great Yarmouth Corpn v Gibson** [1956] 1 113, CA.

Litter—**Depositing and leaving litter—**

Offence. *See* Criminal law (Litter—Depositing and leaving litter).

Moveable dwellings—**Vans intended for use for human habitation—**

Vans not to be placed on land without permission from corporation—Exception in favour of travelling showmen—Scope of exception—Owner of land permitted showmen to occupy land with vans in which they lived—No permission from corporation—Whether permission necessary—Birmingham Corporation Act 1935, s 43. **Drakeley v Manzoni** [1938] 1 67, KBD.

Nuisance. *See* Nuisance (Statutory nuisance).

Rag collection—**Restriction on sales etc by persons collecting or dealing in rags etc—**

Restriction on sale or delivery of article to person under fourteen—Article—Delivery of goldfish to person under age of 14 years—Whether an 'article'—Public Health Act 1936, s 154(1). **Daly v Cannon** [1954] 1 315, QBD.

Recovery of expenses—

Maintenance of patient in hospital. *See* Expenses—Recovery—Expenses of maintenance of patient in hospital, *ante*.

Refuse—**Collection—**

Closure or obstruction of means of access—Refusal by householder to allow local authority's dustmen to use passageway through his house to collect refuse from adjoining houses—Whether council, relying on prior usage of passageway, had established a means of access—Means of access as an easement—Public Health Act 1936, s 55(2). **Coupe v Barrett** [1969] 3 37, QBD.

PUBLIC HEALTH (cont)

Refuse (cont)—

House refuse—

Removal—Duty of local authority—Converted dwelling-house used as office by insurance company—Whether refuse emanating therefrom 'house refuse'—Public Health Act 1936, s 72(1)(2). *Iron Trades Mutual Employers Insurance Association Ltd v Sheffield Corporation* [1974] 1 182, QBD.

Notice requiring owner or occupier to provide dustbin—

Notice set aside by justices—Right of local authority to appeal to quarter sessions—Whether person aggrieved—Public Health Act 1936, s 301. *R v Nottingham Quarter Sessions, ex parte Harlow* [1952] 2 78, QBD.

Owner of building required by local authority to provide dustbin—House subject to Rent Restrictions Acts—Appeal by owner to justices—Copy of notice of appeal given to occupier—Court 'may' make such order as it thinks fit—Duty of court—Whether obliged to require owner or occupier to provide dustbin—Public Health Act 1936, s 75(1)(3)—Local Government (Miscellaneous Provisions) Act 1953, s 8(4)(b). *Peterborough Corp v Holdich* [1955] 3 424, QBD.

Owner of building required by local authority to provide dustbin—House subject to Rent Restrictions Acts—Dustbin originally provided by owner—No contractual obligation to provide—Owner's appeal to justices allowed—Transfer of 'burden or liability' from landlord to tenant—Increase of Rent and Mortgage Interest (Restrictions) Act 1920, s 2(3)—Public Health Act 1936, s 75(1). *First National Housing Trust Ltd v Chesterfield Rural District Council* [1948] 2 658, KBD.

Owner of building required by local authority to provide dustbin—Right of appeal to justices—Public Health Act 1936, s 75. *Croydon Corp v Thomas* [1947] 1 239, KBD.

Sewerage—

Adoption by local authority of sewers and sewage disposal works—

Sewer—Part of newly constructed sewer sealed off—Whether sealed off part remained a sewer—Public Health Act 1936, s 17, s 343. *Blackdown Properties Ltd v Ministry of Housing and Local Government* [1965] 2 345, ChD.

Conversion of natural watercourse into sewer—

Discharge of sewage into natural stream for over 20 years—Statute making discharge of sewage into stream illegal—Whether watercourse converted into 'sewer'—Public Health Act 1875, s 4—Rivers Pollution Prevention Act 1876, s 3. *George Legge & Son Ltd v Wenlock Corp* [1938] 1 37, HL.

Discharge of trade effluent into public sewers—

Discharge from premises before 1937—New premises added in 1946—Effluent from both premises same in nature and amount as before 1937—Need for notice of discharge of effluent after 1946—Public Health (Drainage of Trade Premises) Act 1937, ss 2(1), 4(1), 14(1). *Yorkshire Dyeing and Proofing Co Ltd v Middleton Borough Council* [1953] 1 540, QBD.

Overloading of sewers—

Flooding of neighbouring premises—Nuisance—Liability of sanitary authority. *See Nuisance* (Creation of nuisance—Sewer—Overflow—Flooding of neighbouring premises—Sanitary authority under statutory duty to allow occupiers of houses to discharge sewage into sewers—Liability of sanitary authority).

Provision of public sewers—

Local authority—Power to construct sewer 'in, on or over' land on giving reasonable notice—Land—Proposal by local authority to construct sewer through site of plaintiff's bungalow—Construction of sewer involving demolition of bungalow—Whether 'land' including buildings—Whether authority entitled to demolish building in order to construct sewer—Interpretation Act 1889, s 3—Public Health Act 1936, s 15(1). *Hutton v Esher Urban District Council* [1973] 2 1123, CA.

Public sewer—

Meaning—Pipe constructed to receive flood water from river—Pipe also constructed to drain surface water from buildings and road surfaces—Whether pipe a public sewer—Public Health Act 1936, s 15(1). *Hutton v Esher Urban District Council* [1973] 2 1123, CA.

Water—

Works vesting in local authority. *See Water supply* (Local authority—Works used for gratuitous supply of water to inhabitants of district vested in local authority).

PUBLIC HOUSE

Development value—

Site of former public house. *See Town and country planning* (Development value—Site of former public house).

Licence—

Sale of intoxicating liquor. *See Licensing*.

Tied house covenants—

Restraint of trade. *See Restraint of trade by agreement* (Public house—Tied house covenants).

PUBLIC INTEREST

Discovery of documents—

Privilege. *See Discovery* (Privilege—Production contrary to public interest).

Libel and slander—

Qualified privilege. *See Libel and slander* (Qualified privilege—Public interest).

Telegraphs and telephones—

Placing of telegraphic lines across private land. *See Telegraphs and Telephones* (Telegraphic lines—Placing of telegraph line across private land—Public interest).

PUBLIC LIABILITY INSURANCE

See Insurance (Liability insurance—Public liability insurance).

PUBLIC MEETING

Newspaper report—

Defamation—

Qualified privilege. *See* **Libel and slander** (Qualified privilege—Public meeting—Meeting for furtherance or discussion of matter of public concern—Report of meeting in newspaper).**PUBLIC MISCHIEF**Conspiracy. *See* **Criminal law** (Conspiracy—Public mischief).Indictment. *See* **Indictment** (Joinder of charges—Charges founded on same facts—Sedition and effecting a public mischief).**PUBLIC MORALS**Conspiracy to corrupt public morals. *See* **Criminal law** (Conspiracy—Corruption of public morals).**PUBLIC NUISANCE**Criminal proceedings. *See* **Criminal law** (Public nuisance).Injunction. *See* **Injunction** (Nuisance—Public nuisance).Generally. *See* **Nuisance** (Public nuisance).**PUBLIC OFFICE**Communication of restricted information. *See* **Criminal law** (Official secrets—Communication of information—Persons holding office under His Majesty).Income tax on emoluments. *See* **Income tax** (Emoluments from office or employment—Public office in United Kingdom).Misbehaviour in. *See* **Criminal law** (Misbehaviour in public office).

Will—

Condition—

Specific condition—Forfeiture upon acceptance of public office. *see* **Will** (Condition—Specific condition—Forfeiture upon acceptance of public office).**PUBLIC ORDER**Incitement to racial hatred. *See* **Criminal law** (Public order—Incitement to racial hatred).

Offensive conduct conducive to breaches of peace—

Public place. *See* **Public place**—Offensive conduct conducive to breaches of peace, *post*.

Threatening, abusive or insulting words or behaviour—

Information—Duplicity—Information alleging 'threatening and insulting words and behaviour'—Allegation relating to single incident—Whether information bad for duplicity—Public Order Act 1936, s 5, as substituted by the Race Relations Act 1965, s 7. **Vernon v Paddon** [1973] 3 302, QBD.Insulting—Question whether behaviour 'insulting' one of fact—Word 'insulting' having ordinary meaning—Behaviour affronting other people, or evidencing a disrespect of their rights so as to give rise to resentment or protest not necessarily insulting—Public Order Act 1936, s 5, as substituted by the Race Relations Act 1965, s 7. **Brutus v Cozens** [1972] 2 129, HL.Public meeting—Group of persons in audience intent on obstructing speaker—Words in fact insulting to them—Speaker must take his audience as he finds them—Whether contravention of Public Order Act 1936, s 5. **Jordan v Burgoyne** [1963] 2 225, QBD.Quarrel between neighbours taking place on highway—Whether contravention of Act—Public Order Act 1936, s 5. **Ward v Holman** [1964] 2 729, QBD.Political uniforms. *See* **Uniforms, post**.

Preservation of public order on occasion of processions—

Order prohibiting processions—

Offence to organise public procession in contravention of order—Procession formed spontaneously—Subsequently led and directed by an individual—Whether 'organising' procession—Public Order Act 1936, s 3(4). **Flockhart v Robertson** [1950] 1 1091, KBD.

Public place—

Offensive conduct conducive to breaches of peace—

Disturbance on railway station platform—Whether platform 'public place'—Public Order Act 1936, ss 5, 9. **Cooper v Shield** [1971] 1 917, QBD.Open space to which public have access—Open space—Tennis club—Club grounds consisting of complex of tennis courts, administrative buildings and partly covered stands around one tennis court—Disruption of tennis match on one of courts—Whether court consisting an open space—Public Order Act 1936, s 9. **Cozens v Brutus** [1972] 2 1, QBD.

Premises or place to which public have or are permitted to have access—

Public denied access to certain parts of premises—Football ground—Pitch surrounded by speedway track and spectator stands—Public admitted to stands but prohibited from entering track or pitch—Spectator arrested on track and charged with using threatening words or behaviour in a public place—Whether football ground as a whole, including pitch and tract, to be treated as a 'public place'—Public Order Act 1936, ss 5 (as substituted by the Race Relations Act 1965, s 7), 9(1) (as substituted by the Criminal Justice Act 1972, s 33). **Cawley v Frost** [1976] 3 743, QBD.

Uniforms in connection with political objects—

Prohibition—

Uniform—Meaning—Single article of clothing—Article worn by each member of group to indicate that they are together and in association—Black beret—Whether single article capable of constituting 'uniform'—Whether necessary that article should cover whole or most of body—Public Order Act 1936, s 1(1). **O'Moran v Director of Public Prosecutions** [1975] 1 473, QBD.

PUBLIC ORDER (cont)

Uniforms in connection with political objects (cont)—

Prohibition (cont)—

Wearing of uniform to signify wearer's association with political organisation or with promotion of political objects—Evidence that uniform signifies association with political organisation—Evidence that uniform used in past to signify such association—Evidence that group assembling together wore uniform to indicate such association—Public Order Act 1936, s 1(1). *O'Moran v Director of Public Prosecutions* [1975] 1 473, QBD.

Unlawful assembly. *See* **Criminal law** (Unlawful assembly).

PUBLIC PERFORMANCE

Infringement of copyright in literary, dramatic or musical work, by. *See* **Copyright** (Infringement—Public performance).

PUBLIC PLACE

Affray. *See* **Criminal law** (Affray—Public place).

Drunkenness. *See* **Intoxicating liquor** (Offences—Drunk and disorderly in a public place).

Frequenting with intent. *See* **Criminal law** (Vagrancy—Frequenting public place with intent).

Offences against public order. *See* **Public order** (Public place).

Offensive conduct in public place. *See* **Public order** (Public place—Offensive conduct conducive to breaches of the peace).

Offensive weapons. *See* **Criminal law** (Offensive weapons—Having offensive weapon in public place).

Premises open to public—

Duty to institute crowd control. *See* **Negligence** (Duty to take care—Premises open to public—

Danger from rush of people—Duty to institute crowd control).

Removal of articles from public place. *See* **Criminal law** (Removal of articles from public building).

Unfitness to drive—

Being in charge of vehicle. *See* **Road traffic** (Being in charge of vehicle when unfit to drive through drink or drugs—Road or other public place).

Unlawful assembly. *See* **Criminal law** (Unlawful assembly—Public place).

PUBLIC POLICY

Contract—

Frustration. *See* **Contract** (Frustration—Public policy).

Illegality. *See* **Contract** (Illegality—Public policy).

Forum shopping—

Prevention of. *See* **Conflict of laws** (Tort—Actionability in England—Tort not justified *bona fide* loci delicti—'Not justified'—Prevention of forum shopping a matter of public policy).

Insurance—

Accident insurance—

Accidental death resulting from criminal acts of insured—Right of insured to indemnity for damages claimed in respect of death. *See* **Insurance** (Accident insurance—Perils insured against—Accident—Public policy).

Intestate's estate—

Exclusion from benefit on grounds of public policy. *See* **Intestacy** (Succession—Exclusion from benefit—Public policy).

Jurisdiction of the court—

Exclusion—

Contract. *See* **Contract** (Illegality—Public policy—Jurisdiction of court—Exclusion).

Marriage—

Gift subject to condition encouraging separation. *See* **Will** (Condition—Family matters—

Condition inducing future separation of spouses—Public policy).

Settlement—

Forfeiture clause—

Validity. *See* **Settlement** (Forfeiture—Validity of forfeiture clause—Public policy).

Succession on death—

Exclusion from benefit—

Manslaughter of deceased. *See* **Will** (Benefit—Exclusion from benefit—Public policy—Manslaughter).

PUBLIC RECREATION GROUND

Provision of—

Charitable purpose. *See* **Charity** (Benefit to community—Health and welfare—Inhabitants of named parish—Provision of public recreation ground).

PUBLIC RIGHT

Injunction—

Relator action. *See* **Injunction** (Public right—Relator action).

PUBLIC RIGHT OF WAY

See **Highway**

PUBLIC SERVICE VEHICLE

Generally. *See* **Road traffic** (Public service vehicle).

Negligence—

Exclusion of liability. *See* **Carriers** (Negligence—Exclusion of liability).

PUBLIC TRANSPORT

Air—

Carriage of passengers. *See* **Carriage by air** (Carriage of passengers or cargo—Flight for purpose of public transport).

Local authority. *See* **Local authority** (Transport).

London Passenger Transport Board. *See* **London Passenger Transport Board**.

PUBLIC TRANSPORT (cont)

London Transport Executive. *See* **London Transport Executive**.

PUBLIC TRANSPORT Road traffic.

See **Road traffic** (Public transport).

PUBLIC TRANSPORT

Stage carriage. *See* **Road traffic** (Stage carriage).

Value added tax—

Transport of passengers—

Zero-rating. *See* **Value added tax** (Zero-rating—Transport of passengers).

PUBLIC TRUSTEE

Directions of court—

Discretion of Public Trustee to apply to court for directions where beneficiary cannot be found—

Refusal by Public Trustee to pay sequestrator of life tenant's interest on ground that no sufficient evidence that life tenant still alive—Whether court should direct Public Trustee to exercise discretion to apply for directions—Public Trustee Act 1906, s 10—Public Trustee Rules 1912 (S R & O 1912 No 348), r 28. *Re Wilson* (decd) [1964] 1 196, ChD.

Funds in court—

Holding by. *See* **Practice** (Funds in court—Holding exceeding £7,500—Holding by Public Trustee out of court).

Investment of funds in court—

Common investment funds—

Capital fund—Damages—Damages awarded to a minor—Principle governing investment in capital fund. *Practice Note* [1971] 1 109, QBD.

Remuneration. *See* **Trust and trustee** (Remuneration of trustee—Public Trustee).

PUBLIC UTILITY UNDERTAKING

Compulsory purchase—

Compensation—

Assessment. *See* **Compulsory purchase** (Compensation—Assessment—Public utility undertaking).

PUBLICATION

Committal proceedings—

Reports of proceedings—

Order lifting restrictions. *See* **Criminal law** Committal—Preliminary hearing before justices—Publicity—Order Lifting restrictions)

Contempt of court—

Publications concerning legal proceedings. *See* **Contempt of court** (Publications concerning legal proceedings).

Elections—

Publications printed etc for purpose of promoting election of a candidate. *See* **Elections** (Publications).

Legal proceedings, concerning—

Contempt of court. *See* **Contempt of court** (Publications concerning legal proceedings).

Libel. *See* **Libel and slander** (Publication).

Obscene. *See* **Criminal law** (Obscene publications).

Patent—

Invention. *See* **Patent** (Invention—Publication).

Unsolicited publications—

Offences. *See* **Criminal law** (Unsolicited publications).

Ward of court—

Protection—

Publication of matter likely to be harmful to ward. *See* **Ward of court** (Jurisdiction—Protection of ward—Freedom of publication).

PUBLISHER

Entertaining expenses—

Deduction in computing profits for income tax purposes. *See* **Income tax** (Deduction in computing profits—Expenses wholly and exclusively laid out for purposes of trade—Entertaining expenses).

PUBLISHERS

Contract with author—

Repudiation—

Alteration of manuscript. *See* **Contract** (Repudiation—Publisher and author—Alteration of manuscript).

PUMPING STATION

Water supply. *See* **Water supply** (Power to obtain water outside water district of corporation).

PUNITIVE DAMAGES

See **Damages** (Exemplary damages).

PURCHASE NOTICE

Confirmation. *See* **Town and country planning** (Purchase notice—Confirmation).

PURCHASE ORDER

War damage. *See* **Town and country planning** (War damage).

PURCHASE TAX

Certificate of registration—

Condition—

Requirement that representations as holder be made only in specified circumstances or in respect of specified goods—No directions issued as to circumstances or goods—Whether notice imposing condition valid—Purchase Tax Act 1963, s 6(4)(b). **B Marsh (Wholesale) Ltd v Commissioners of Customs and Excise** [1970] 1 990, QBD.

Chargeable goods—

Admission of all facts pleaded—

Objection in law—Whether evidence subsequently admissible. *See Evidence* (Point of law in issue on pleadings—Defence containing admission of facts alleged in statement of claim but raising objection in point of law—Claim for declaration that plastic closures for tins not chargeable to purchase tax).

Appliances and apparatus of a kind used for domestic purposes—

Electric heating pads and blankets—Whether ‘appliances and apparatus of a kind used for domestic purposes’—Finance (No 2) Act 1940, Sch VII, para 7. **Attorney-General v Milliwatt Ltd** [1948] 1 331, KBD.

Chocolates, sweets and similar confectionery—

‘Butterkist’—Similar confectionery—Distribution mainly through cinemas and confectionery trade—Packaging suitable for confectionery—Whether confectionery similar to chocolates and sweets—Purchase Tax Act 1963, s 2, Sch 1, Part 1, Group 34. **Commissioners of Customs and Excise v Clark’s Cereal Products Ltd** [1968] 3 778, QBD.

Sweetened popcorn—Confectionery—Whether confectionery similar to chocolates and sweets—Purchase Tax Act 1963, s 2, Sch 1, Part 1, Group 34. **Commissioners of Customs and Excise v Popcorn House Ltd** [1968] 3 782, QBD.

Toffee apples—Sale to wholesalers and distributors in fruit trade—Not sold through confectionery trade—Whether articles of confectionery similar to chocolates and sweets—Purchase Tax Act 1963, s 2, Sch 1, Part 1, Group 34. **Candy Maid Confections Ltd v Commissioners of Customs and Excise** [1968] 3 773, ChD.

Drugs and medicines—

Syrup of blackcurrant containing vitamin C—Ribena—Ribena on market principally as health drink for normally healthy persons—Predominant use as a refreshing drink which might also make good any vitamin C deficiency in diet—Use to increase vitamin C intake of expectant and nursing mothers—Occasional use to prevent recurrence of scurvy—Whether a ‘drug or medicine’—Whether exempt from charge as a preparation consisting of a scheduled substance and a vehicle—Purchase Tax Act 1963, s 2(1), Sch 1, Part 1, r 1, Group 33—Purchase Tax (No 2) Order 1968 (SI 1968 No 1511), art 1, Sch, Head III. **Commissioners of Customs and Excise v Beecham Foods Ltd** [1972] 1 498, HL.

Furniture—

Built-in dressing table units which were unstable unless fixed between other units of furniture and to walls—Units easily removable—Whether chargeable to tax as ‘furniture’—Purchase Tax Act 1963, Sch 1, Part 1, Group 11. **Austin (F) (Leyton) Ltd v Commissioners of Customs and Excise** [1968] 2 13, ChD.

Kits of parts—Components for assembling backed storage units in tiers—Assembled units able to stand without having been affixed to wall—Whether kits were ‘furniture’ for the purposes of purchase tax—Finance Act 1958, s 1, Sch 2, Group 11(b). **Commissioners of Customs and Excise v H G Kewley Ltd** [1965] 1 929, CA.

Kits of parts—Panels, and metal channels for joining them, sold in kits from which one or more of several different articles of furniture could be made—Whether ‘furniture’ for the purposes of purchase tax—Finance Act 1948, s 20, Sch 8, Part 1, Group 11(A). **Betterways Panels Ltd v Customs and Excise Comrs** [1964] 1 948, KBD.

Hardware—

Kitchenware—Plastic lids supplied with coffee tins for resealing opened tins—Whether plastic lids were ‘hardware’ or ‘kitchenware’ within Group 11—Purchase Tax Act 1963, Sch 1, Part 1, Group 11. **Pioneer Plastic Containers Ltd v Commissioners of Customs and Excise** (No 2) [1968] 1 192, ChD.

Manufactured beverages including fruit juices—

Including fruit juices—Orange juice freshly pressed from a single orange—Whether manufactured beverage—Purchase Tax Act 1963, s 2(1) (2), Sch 1, Part 1, Group 35(a). **Commissioners of Customs and Excise v Savoy Hotel Ltd** [1966] 2 299, QBD.

Pictures, prints, engravings etc—

Goods produced in quantity for general sale—Sale—Consideration for supply of goods—Goods produced for distribution to customers purchasing specified other goods—Coins bearing likenesses of members of English World Cup soccer team—Coins produced by petrol suppliers for distribution by petrol stations to motorists purchasing specified quantity of suppliers’ petrol—Whether coins supplied in consideration of money payments by motorists—Whether coins produced for ‘sale’ to motorists—Purchase Tax Act 1963, Sch 1, Group 25. **Esso Petroleum Ltd v Comrs of Customs and Excise** [1976] 1 117, HL.

Pictorial stamps—Stamps attached to goods sold by manufacturers to retailers for resale—Whether ‘pictures’—Finance Act 1948, s 20(1), Sch VIII, Part 1, Group 25. **Stephenson Bros Ltd v Comrs of Customs and Excise** [1953] 1 469, ChD.

Chargeable process—

Conversion of vehicle—

Conversion of army wireless type vehicle into shooting brake—Whether ‘chargeable process’—Finance Act 1946, s 16(1) (3). **Coleborn & Sons Ltd v Blond** [1950] 2 351, CA.

Demand—

Signature—

Demand authorised by proper officer but signed by officer not so authorised—Customs and Excise Act 1952, s 4(1). **Comrs of Customs and Excise v Cure & Deeley Ltd** [1961] 3 641, QBD.

PURCHASE TAX (cont)

Discovery—

Summary application to High Court—

Power to order production of records and documents—Incrimination of tax-payer—Order where defendant not a 'registered person'—Finance Act 1946, s 20(2) (3)—Crown Proceedings Act 1947, s 14(2)(d). **Comrs of Customs and Excise v Ingram** [1948] 1 927, CA.

Double charge of tax—

Relief—

Tax chargeable on appropriation of goods by wholesaler—Tax paid on previous occasion on purchase by vendor to wholesaler—Finance Act 1944, s 15(1). **Comrs of Customs and Excise v Rensop Drapers Ltd** [1951] 1 450, CA.

Evasion—

Imported goods—

Evasion of purchase tax and evasion of customs duty—Whether one offence—Customs Consolidation Act 1876, s 186—Finance Act 1944, s 11(1). **Beck v Binks** [1948] 2 1058, KBD.

False returns—

Company's liability—

False returns with intent to deceive made by servant of company in fraud of company—Whether company liable. **Moore v I Bresler Ltd** [1944] 2 515, KBD.

Goods appropriated or applied by wholesalers and manufacturers—

Appropriated or applied—

Sale by manufacturer to private person—Date of appropriation of goods to contract—Finance (No 2) Act 1940, s 25. **B Morris Ltd v Lunzer** [1942] 1 77, CA.

Incidence—

Contract price of goods agreed without reference to tax—

Tax to be borne by the seller—Finance (No 2) Act 1940, ss 18, 22, 23, 25, 27, 28. **Love v Norman Wright (Builders) Ltd** [1944] 1 618, CA.

Information to be supplied to commissioners by person concerned with the purchase of goods—

Purchase—

Meaning—Information as to sales—Whether 'purchase'—Whether court has jurisdiction to specify form in which information to be given—Finance Act 1946, s 20(3). **Comrs of Customs and Excise v Ingram** [1949] 1 896, CA.

Manufacturer—

Goods for use in or in connection with business—

Production of diaries for distribution to church congregation—Costs and profits derived from advertising revenue—Delivery to minister without charge—Free distribution to members of congregation—Publishers made diaries for use in connection with business—Appropriation of diaries constituting chargeable purchase—Finance (No 2) Act 1940, s 25(1)—Finance Act 1962, s 6(3). **Warwickshire Publishing Co Ltd v Commissioners of Customs and Excise** [1970] 1 291, CA.

Refund—

Money paid under mistake of law—

Payment made while liability sub judice. **Sebel Products Ltd v Comrs of Customs and Excise** [1949] 1 729, ChD.

Regulations—

Validity—

Power of Commissioners of Customs and Excise to make regulation which 'appears to them necessary' to enable them to discharge their functions—Whether commissioners sole judges of what was necessary—Ouster of court's jurisdiction—Finance (No 2) Act 1940, s 33—Purchase Tax Regulations 1945 (S R & O 1945 No 517), reg 12. **Comrs of Customs and Excise v Cure & Deeley Ltd** [1961] 3 641, QBD.

Value added tax—

Relief. *See* **Value added tax** (Relief—Goods held at commencement of April 1973—Goods on which purchase tax or other duty paid).

Wholesale value—

Calculation—

Appropriation by manufacturer of chargeable goods for sale in retail department—Opinion of commissioners—Power of court to review—Finance (No 2) Act 1940, s 21(1). **Attorney-General v A W Gamage Ltd** [1949] 2 732, KBD.

Stationery—Football coupons printed by subsidiary of pools promoters—Copyright material used in compilation of coupons—Royalties paid by pool promoters for non-exclusive licence to reproduce or authorise reproduction of copyright material—Whether a copyright element should be included in wholesale value—Finance (No 2) Act 1940, s 21, Sch 8, paras 3, 4, 5. **Customs & Excise Comrs v J & C Moores Ltd** [1964] 2 983, HL.

PURCHASER'S LIEN

Sale of land. *See* **Sale of land** (Purchaser's lien).

QUANTUM MERUIT

Additional to salary—

Bonus. *See* **Master and servant** (Remuneration—Quantum meruit).

Contract—

Generally. *See* **Contract** (Quantum meruit).

QUARRY

Management and control—

Supervision by quarry manager—

Safety—Avoidance of danger from falls—Duty of manager to avoid danger from falls—Inspection of quarry face—Quarry worked on single face system—Deceased working on floor of quarry near face—Manager and deputy manager unaware that deceased working there—Deceased killed by fall of rock from face—Whether sole manager had supervision over quarry operations in progress—*Mines and Quarries Act 1954*, ss 103(1), 108(1), 157. **Sanderson v Millom Hematite Ore & Iron Co Ltd** [1967] 3 1050, Assizes.

Minerals—

Right to work—

Refusal to grant rights over adjoining fields—Reasonable offer and refusal—Extent of jurisdiction—*Mines (Working Facilities and Support) Act 1923*, ss 1, 3, 6, 9. **Re West of England Road Metal Co Ltd** [1936] 2 1607, Ry & Can Com.

Safe methods of working—

Statutory duty of manager—

Duty to ensure quarrying operations carried on so as to avoid danger—Duty to ensure inspection carried out by competent person—'Competent'—*Mines and Quarries Act 1954*, s 108(1)—*Quarries (General) Regulations 1956* (S.I. 1956 No 1780) regs 2(1)(b), 41. **Brazier v Skipton Rock Co Ltd** [1962] 1 955, Assizes.

QUARTER SESSIONS

Abolition—

Replacement by Crown Court. *See* Crown Court.

Adjournment of hearing. *See* Appeal to—Hearing—Adjournment sine die, *post*.

Allocutus. *See* Criminal law (Trial—Allocutus—Quarter sessions).

Appeal from—

Statutory provision that judgment of quarter sessions final—

Right of appeal by way of case stated—*Summary Jurisdiction Act 1879*, s 40—*Gaming Act 1968*, Sch 7, para 11(4). **Tehrani v Rostrom** [1971] 3 790, CA.

Appeal to—

Abandonment of appeal—

Application to withdraw notice of abandonment—Jurisdiction—No power to entertain application unless abandonment a nullity, as through mistake or fraud. **R v Essex Quarter Sessions, ex parte Larkin** [1961] 3 930, QBD.

Appeal against approved school order—

Jurisdiction—Order against young person aged 16—Appeal by parent—Young person over 17 when appeal heard—Jurisdiction to hear appeal. **Rugman v Drover** [1950] 2 575, KBD.

Appeal against committal of offenders to quarter sessions for sentence—

Jurisdiction—Sentence—Order made on conviction—Committal for sentence—Appeal against committal—Competency—*Criminal Justice Act 1948*, s 36(2). **R v London Sessions Appeal Committee, ex parte Rogers** [1951] 1 343, KBD.

Appeal against conviction—

Practice—Documents to be placed before the court. **R v Grimsby Borough Quarter Sessions, ex parte Fuller** [1955] 3 300, QBD.

Practice—Documents to be sent to quarter sessions. *Practice Note* [1956] 1 448, QBD, **R v Dorset Quarter Sessions, ex parte O'Brien** [1956] 1 449, QBD.

Right of person aggrieved by order or conviction to appeal—Plea of guilty at trial—Whether person unequivocally pleading guilty can be 'aggrieved' by conviction—*Metropolitan Police Courts Act 1839*, s 50. **R v Deputy Chairman of the County of London Quarter Sessions Appeal Committee, ex parte Borg** [1957] 3 28, QBD.

Substitution of conviction of alternative offence—Conviction by justices for malicious wounding—On appeal conviction for common assault substituted—Whether quarter sessions had jurisdiction to substitute a conviction of the lesser offence—Offences against the Person Act 1861, s 20. **Lawrence v Same** [1968] 1 1191, QBD.

Appeal against order for forfeiture of recognisance—

Jurisdiction where sum or penalty adjudged to be paid more than £3—Whether sum or penalty adjudged to be paid including estreating of recognisance—*Metropolitan Police Courts Act 1839*, s 50—*Public Health Act 1875*, s 269—*Summary Jurisdiction Act 1879*, ss 9(1), 13, 19—*Criminal Justice Administration Act 1914*, s 37—*Criminal Justice Act 1925*, s 25. **Cockhill v Davies** [1943] 1 638, KBD.

Appeal against sentence—

Hearing solely on evidence given below—No objection by counsel—Whether confirmation of sentence valid—Amendment of notice of appeal to include appeal against conviction—Jurisdiction. **Paprika Ltd v Board of Trade** [1944] 1 372, KBD.

Sentence—Order made on conviction—Order that defendant should enter into recognisance—Whether 'order made on conviction'—*Criminal Justice Act 1948*, s 36(2). **R v London Sessions Appeal Committee, ex parte Beaumont** [1951] 1 232, KBD.

Approved school order against—

Jurisdiction. *See* Appeal to—Appeal against approved school order—Jurisdiction, *ante*.

Betting and gaming appeal—

Appeal against refusal of permit for amusements with prizes—Jurisdiction on appeal—*Betting, Gaming and Lotteries Act 1963*, s 49(1), Sch 6, para 6. **Sagnata Investments v Norwich Corp'n** [1971] 2 1441, CA.

Customs offence—

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Statutory duty—Positioning of points—Parallel to the adjacent lines or in such other position and be of such form as to cause as little obstruction as possible—Shunter caused to fall from step of locomotive by lever—Whether breach of statutory duty—Whether lever negligently sited—Contributory negligence—Prevention of Accidents Rules 1902 (S R & O 1902 No 616), r 5. **Hicks v British Transport Commission [1958] 2 39, CA.**

Light railway—

Amending order. *See Light railway* (Amending order).

Look-out—**Statutory duty to appoint in circumstances in which danger is likely to arise—**

Ganger and two men sent to do three-man job—Line on which no train scheduled but on which engine or diverted train might come at any time—Ganger told no train scheduled—Work proving more difficult than anticipated and ganger having to stand near live line—Ganger did not send for look-out—Ganger struck by train diverted on to line—Breach of statutory duty by railway authority—Whether sole responsibility of ganger—Prevention of Accidents Rules 1902 (S R & O 1902 No 696), r 9. **Keaney v British Railways Board [1968] 2 532, CA.**

Work for the purpose of relaying or repairing permanent way—

Death of signal fitter on line—Signal fitter engaged on routine oiling of signal apparatus on permanent way—Whether oiling 'repairing the permanent way'—**Railway Employment (Prevention of Accidents) Act 1900, s 1(1), schedule, cl 12—Prevention of Accidents Rules 1902 (S R & O 1902 No 616), r 9. London and North Eastern Ry Co v Berriman [1946] 1 255, HL.**

Injury to employee on line—Contributory negligence of workman—Whether circumstances in which 'danger is likely to arise'—**Railway Employment (Prevention of Accidents) Act 1900, Sch, cl 12—Prevention of Accidents Rules 1902 (S R & O 1902 No 616), r 9. Hutchinson v London and North Eastern Ry Co [1942] 1 330, CA.**

Lengthmen engaged on tightening nose bolts on line—Work involving use of 'T' spanner—Whether 'danger ... likely to arise'—**Railway Employment (Prevention of Accidents) Act 1900, s 1(1), Sch, cl 12—Prevention of Accidents Rules 1902 (S R & O 1902 No 616), r 9. Reilly v British Transport Commission [1956] 3 857, QBD.**

Provision of one look-out insufficient—Prevention of Accidents Rules 1902 (S R & O 1902 No 616), r 9. **Dyer v Southern Ry Co [1948] 1 516, KBD.**

Re-layer inspecting line to determine lengths of metals later required for re-laying—Whether working 'for the purpose of relaying or repairing line'—**Railway Employment (Prevention of Accidents) Act 1900, s 1(1), Sch, cl 12—Prevention of Accidents Rules 1902 (S R & O 1902 No 616), r 9. Judson v British Transport Commission [1954] 1 624, CA.**

Sub-ganger lengthman engaged on tightening loose fish-plates on goods line—Train going at slow speed—Whether 'danger ... likely to arise'—Prevention of Accidents Rules 1902 (S R & O 1902 No 616), r 9. **Cade v British Transport Commission [1958] 2 615, HL.**

RAILWAY (cont)

Mines—

Mines lying near railway—

Compensation for not working mines—Whether sum deductible for income tax and profits tax if profits had been earned—Railway Clauses Consolidation Act 1845, s 78 (as substituted by Mines (Working Facilities and Support) Act 1923, s 15). **Thomas McGhie & Sons Ltd v British Transport Commission** [1962] 2 646, QBD.

Railway lines above ground at mines. *See* **Mine** (Railway lines above ground at mines).

Negligence—

Duty to take care. *See* **Negligence** (Duty to take care—Railway).

Generally. *See* **Negligence** (Railway).

Rescuer—

Duty to rescuer. *See* **Negligence** (Duty to take care—Rescuer—Railway).

Occupier's liability—

Carriage of passengers—

Safety of premises. *See* **Occupier's liability** (Carriage of passengers—Safety of premises).

Offence—

Travelling on railway with intent to avoid payment of fare—

Intent to avoid payment of fare of co-passenger—Whether co-passenger in process of 'travelling' when at ticket barrier after alighting from train—London Transport Board Bye-laws No 8(1) made under Transport Act 1962, s 67. **Murphy v Verati** [1967] 1 861, QBD.

Time for formation of intent—Regulation of Railways Act 1889, s 5(3)(a). **Bremme v Dubery** [1964] 1 193, QBD.

Use of partly used non-transferable ticket issued to another—Whether necessary to prove intent to defraud—Regulation of Railways Act 1889, s 5(3)(a). **Browning v Floyd** [1946] 2 367, KBD.

Unlawful act endangering safety of person conveyed on a railway—

Danger—Whether actual danger must be established—Offences against the Person Act 1861, s 34. **R v Pearce** [1966] 3 618, CA.

Platform—

Whether 'public place' within meaning of Public Order Act 1936. *See* **Public order** (Public place)—Offensive conduct conducive to breaches of the peace—Disturbance on railway platform).

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Breach of statutory duty. *See* **Master and servant** (Duty of master—Offices, shops and railway premises).

Railway and Canal Commission—

Review of order—

Application—Time for application—Railway and Canal Traffic Act 1888, s 18(2)—Rules of Procedure 1924, r 69. *Re* **Railways (Valuation for Rating) Act 1930, Application by Railway Assessment Authority** [1936] 2 316, Ry & Can Com.

Rating—

Railway assessment authority—

Jurisdiction—Valuation roll—Estimated relative values—Adjustment—Time for objection expired—Railways (Valuation for Rating) Act 1930. **R v Railway Assessment Authority, ex parte Southampton Corpn** [1937] 1 431, KBD.

Railway hereditament—

Amendment of valuation list—Proposal for amendment of list—Railway valuation roll—Hereditament shown in railway valuation roll as railway hereditament—Meaning of 'railway valuation roll'—Rating and Valuation Act 1925, s 37—Railways (Valuation for Rating) Act 1930. **Worthing Corpn v Southern Ry Co** [1943] 2 331, HL.

Exclusion of premises occupied as a dwelling-house, hotel or place of public refreshment—Hostel and canteen for railway staff—Whether 'occupied as dwelling-house or hotel'—Railways (Valuation for Rating) Act 1930, s 1(3). **Railway Assessment Authority v Great Western Ry Co** [1947] 2 794, HL.

Exclusion of premises so let out as to be capable of separate assessment—Premises let at railway stations—Whether capable of separate assessment—Railways (Valuation for Rating) Act 1930, s 1(3). **Westminster City Council v Southern Ry Co** [1936] 2 322, HL.

Meaning and extent of term—Bridge constructed under statutory authority—Two decks—Upper deck carrying railway—Lower deck carrying roadway—Whether lower deck 'railway hereditament'—Railways (Valuation for Rating) Act 1930, s 1(3). **Newcastle-upon-Tyne Corpn v Railway Assessment Authority** [1936] 3 616, HL.

Occupancy by Crown—Inclusion in supplemental list as so occupied—Resumption of occupancy of railway company—Inclusion in provisional list after passing of Local Government Act 1948, and the coming into force of provisions exempting railway hereditaments from rating—Local Government Act 1948, ss 85, 89(5). **R v St Pancras Borough Assessment Committee, ex parte The Railway Executive** [1949] 2 371, CA.

Principles of assessment—Fair and just division of the net receipts as between landlord and tenant—Railways (Valuation for Rating) Act 1930, s 4. **Railway Assessment Authority v Southern Ry Co** [1936] 1 26, HL.

Repair of privately owned wagons on railway company's property—

Walking pass to repairing company's employees to enter on railway company's property—

Condition incorporated on pass relieving railway company of responsibility for injury by accident—No evidence of actual knowledge of condition—Reasonable notice of condition—Onus of proof. **Henson v London and North Eastern Ry Co and Coote & Warren Ltd (third third party)** [1946] 1 653, CA.

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Proper law. *See* **Conflict of laws** (Contract—Proper law of contract—Lease of railway rolling stock).

RAILWAY (cont)

- Safe system of working. *See* **Safe system of working** (Safe place of work—Narrow walkway between rail tracks).
- Siding—
 - Enclosed yard—
 - Vagrancy. *See* **Criminal law** (Vagrancy—Found in enclosed premises for an unlawful purpose—Enclosed area—Area—Railway siding).
- Superannuation—
 - Employees of railway company—
 - Contributory scheme—Company contribution equal amount—Division of fund into classes—Contributions and pensions calculated by reference to annual wages—War bonus to be included for the purposes of contributions and pensions—Overtime and Sunday pay to be disregarded—Members' duty to make up deficiency in wages before participating in fund. **Picken v Bruce** [1945] 1 73, CA.

RAILWAY AND CANAL COMMISSION

- Jurisdiction—
 - Application for ancillary rights for working of a quarry. *See* **Mine** (Application for ancillary rights).
- Coal—
 - Removal of restrictions on working of coal. *See* **Coal mining** (Restrictions on working coal—Removal of restrictions—Jurisdiction—Railway and Canal Commission).
- Diversion of highway. *See* **Highway** (Diversion—Order—Jurisdiction—Railway and Canal Commission).

RAPE

- See* **Criminal law** (Rape).

RATE OF EXCHANGE

- Currency. *See* **Money** (Currency—Rate of exchange).
- Date at which calculated. *See* **Money** (Currency—Date at which rate of exchange calculated).

RATES

- Agricultural buildings—
 - Exemption from rates. *See* **Exemption**—Buildings occupied together with agricultural land and used solely in connection with agricultural operations thereon, *post*.

Appeal—**Practice—**

- Appeal by case stated from tribunal—Form of order of Court of Appeal—RSC. Ord 58A, r 3(4)(5). **National Pig Progeny Testing Board v Greenall** (Valuation Officer) [1960] 3 556, CA.

Assessment—

- Assessment committee. *See* **Assessment committee**, *post*.

- Generally. *See* **Valuation**, *post*.

Assessment committee—**Clerk—**

- Appointment of officer of county borough council—Rating and Valuation Act 1925, s 55. **R v Salford Assessment Committee** [1937] 2 98, CA.

Meetings—

- Right of exclusion—County valuation committee officer—Rating and Valuation Act 1925, ss 17, 18. **Middlesex County Valuation Committee v Middlesex Assessment Area Assessment Committee** [1937] 1 403, CA.

Powers and duties of committee—

- Objection to proposed assessment—Industrial property not previously rated—'Proposal' for gross assessment agreed between owners and the rating authority—Assessment committee fixing valuation in excess of 'proposal' in the absence of owners—Proceedings of assessment irregular—Application for order of certiorari—Committee bound to act judicially—Rating and Valuation Act 1925, ss 27, 37. **R v Newmarket Assessment Committee, ex parte Allen Newport Ltd** [1945] 2 371, KBD.

- Objection to proposed assessment—Judicial discretion of assessment committee—Report of competent valuer not seen by parties concerned—Committee's duty to make report known to parties—Rating and Valuation Act 1925, s 38, Sch IV, Part III, para 3. **R v Westminster Assessment Committee, ex parte Grosvenor House (Park Lane) Ltd** [1940] 4 132, CA.

Procedure—

- Inspection of property—Appeal to quarter sessions—Jurisdiction of quarter sessions—Rating and Valuation Act 1925, ss 18(3), 31(1)(4). **Hulme v Bucklow Area Assessment Committee and Wilmslow Rating Authority** [1940] 3 79, KBD.

Charitable and other organisations—**Amount of rates chargeable—**

- Nil amount charged prior to the coming into force of new valuation list—Occupier formerly wholly exempt from rates but now becoming chargeable—Whether entitled to limitation of rates to nil—Rating and Valuation (Miscellaneous Provisions) Act 1955, s 8(2)(a). **Horace Plunkett Foundation v St Pancras Borough Council** [1958] 1 122, QBD.

Hereditable consisting of playing field occupied for purposes of club—

- Friendly society's sports ground—Licence to use sports ground at specified times granted by occupier to club—Whether sports ground occupied for the purposes of the club—Rating and Valuation (Miscellaneous Provisions) Act 1955, s 8(1)(c)(2). **Parker v Borough of Ealing** [1961] 1 147, ChD.

Hereditable occupied for purposes of non-profit making organisation—

- Notice terminating limitation of rates chargeable—When notice may be given—Rating and Valuation (Miscellaneous Provisions) Act 1955, s 8(3). **St Pancras Borough Council v University of London** [1957] 2 673, CA.

RATES (cont)

Charitable and other organisations (cont)—

Hereditament occupied for purposes of non-profit making organisation (cont)—

Notice terminating limitation of rates chargeable—When notice may be given—Notice given before expiration of first year of new valuation list but after rate for second had been made—Rating and Valuation (Miscellaneous Provisions) Act 1955, s 8(2)(3). **Westminster City Council v University of London King's College** [1958] 3 25, ChD.

Hereditament occupied and used for purposes of organisation not established or conducted for profit—

Established or conducted for profit—Whether conducted for profit—Whether charitable organisation, though not established for profit, was conducted for profit by reason of terms of trust—Rating and Valuation (Miscellaneous Provisions) Act 1955, s 8(1)(a). **Guinness Trust (London Fund) Founded 1890 Registered 1902 v West Ham Corp** [1959] 1 482, CA.

Main objects of organisation concerned with advancement of social welfare—Union of working men's clubs—Finding by quarter sessions what main objects were—Business of general advisers—Conclusiveness—Not concerned with the advancement of social welfare—Objects including to carry on the business of publishers, traders, manufacturers, etc—Whether established or conducted for profit—Rating and Valuation (Miscellaneous Provisions) Act 1955, s 8(1)(a). **The Working Men's Club and Institute Union Ltd v Swansea Corp** [1959] 3 769, CA.

Zoo—Zoological society incorporated as company limited by guarantee—Main objects charitable—Organisation concerned with advancement of education—Whether organisation, though not established for profit, was conducted for profit—Rating and Valuation (Miscellaneous Provisions) Act 1955, s 8(1)(a)(2). **North of England Zoological Society v Chester Rural District Council** [1959] 3 116, CA.

Hereditament occupied by charity—

Armed forces' dependants charity—Charity owned seventy-eight flats in which dependants of deceased officers resided—Whether flats occupied by dependants or by charity—Whether charity entitled to rating relief—Rating and Valuation Act 1961, s 11(1)(a). **Soldiers', Sailors' and Airmen's Families Association v Merton Corp** [1966] 3 780, CA.

Hereditaments occupied by charity—

School—Charitable body—Houses occupied by masters on school premises rent free—Occupation by master not essential for efficient performance of duty but associated with extra-curricular activities—Occupation by vice-principal essential for purpose of his duties—Occupation under licence—Nature of obligation to reside—Whether express or implied term—Whether occupation exclusively charitable for purposes of exemption from rates—Valuation (Ireland) Amendment Act 1854, s 2—Valuation (Ireland) Act 1852, s 16. **Northern Ireland Commissioner of Valuation v Fermanagh Protestant Board of Education** [1969] 3 352, HL.

Hereditament occupied for purposes of organisation whose main objects charitable—

Royal College of Nursing—Organisation to promote the 'advance of nursing as a profession'—Rating and Valuation (Miscellaneous Provisions) Act 1955, s 8(1)(a). **Royal College of Nursing v St Marylebone Corp** [1959] 3 663, CA.

Hereditament occupied for purposes of organisation whose main objects concerned with advancement of education—

Chartered Insurance Institute—Whether organisation for advancement of education or for enabling persons to practise insurance to greater advantage—Rating and Valuation (Miscellaneous Provisions) Act 1955, s 8(1). **Chartered Insurance Institute v Corp of London** [1957] 2 638, QBD.

Hereditament occupied for purposes of organisation whose main objects concerned with advancement of religion—

Freemasonry—Organisation mainly concerned with administrative work relating to Freemasonry—Whether main object of organisation concerned with advancement of religion—Whether objects of Freemasonry concerned with the advancement of religion—Rating and Valuation (Miscellaneous Provisions) Act 1955, s 8(1). **United Grand Lodge of Ancient Free and Accepted Masons of England v Holborn Borough Council** [1957] 3 281, QBD.

Hereditament occupied for purposes of organisation whose main objects concerned with advancement of religion, education or social welfare—

Theosophical Society of England—Rating and Valuation (Miscellaneous Provisions) Act 1955, s 8(1)(a). **Berry v St Marylebone Corp** [1957] 3 677, CA.

Hereditament occupied for purposes of organisation whose main objects concerned with advancement of social welfare—

Ex-services association—Main object to promote comradeship between and improve conditions and welfare of all ranks of HM Forces—Organisation for the advancement of social welfare—Ascertainment of main object of organisation having written constitution—Rating and Valuation (Miscellaneous Provisions) Act 1955, s 8(1)(a). **Victory (Ex-Services) Assn Ltd v Paddington Borough Council** [1960] 1 498, QBD.

Friendly society's sports ground—Society not established or conducted for profit—Society's benefits payable to non-members—Whether an organisation whose main objects were concerned with the advancement of social welfare—Rating and Valuation (Miscellaneous Provisions) Act 1955, s 8(1)(a)(2). **Independent Order of Odd Fellows Manchester Unity Friendly Society v Manchester Corp** [1958] 3 378, CA.

Friendly society's sports ground—Whether society non-profit making organisation—Whether 'main objects are charitable or are otherwise concerned with the advancement of social welfare'—Rating and Valuation (Miscellaneous Provisions) Act 1955, s 8(1)(a). **Trustees of the National Deposit Friendly Society v Skegness Urban District Council** [1958] 2 601, HL.

RATES (cont)

Charitable and other organisations (cont)—

Hereditament occupied for purposes of organisation whose main objects concerned with advancement of social welfare (cont)—

General Nursing Council for England and Wales—Organisation concerned with advancement of social welfare—Rating and Valuation (Miscellaneous Provisions) Act 1955, s 8(1)(a). **General Nursing Council for England and Wales v St Marylebone Corp** [1959] 1 325, HL.

Holiday camp for Derbyshire miners, their dependants and invitees—Camp established from compulsory contributions levied under statute—Accommodation and board at camp provided at cost—All Derbyshire miners employed by National Coal Board—Whether camp concerned with the advancement of 'social welfare'—Rating and Valuation (Miscellaneous Provisions) Act 1955, s 8(1). **Skegness Urban District Council v Derbyshire Miners' Welfare Committee** [1959] 2 258, HL.

Industrial Orthopaedic Society—Society occupiers of hospital and other medical units—Objects of society to provide free medical treatment to its members—Membership of 400, 000 nearly all of whom were industrial workers contributing minimum of 3d a week—Whether society concerned with advancement of social welfare—Rating and Valuation (Miscellaneous Provisions) Act 1955, s 8(1). **Waterson v Hendon Borough Council** [1959] 2 760, QBD.

Hereditament occupied for the purposes of an organisation—

Trade union war memorial convalescent home vested in trustees under trust deeds—Home conducted for benefit of union members and their wives—Trustees under strict union control—Whether trustees or union the organisation for whose purposes the home was occupied—Rating and Valuation (Miscellaneous Provisions) Act 1955, s 8(1)(a). **Isaacs v Market Bosworth Rural District Council** [1960] 1 433, QBD.

Hereditaments wholly or mainly used for charitable purposes—

Cremation society—Non-profit making company incorporated for promotion of cremation—Fees charged, but not with a view to profit—no religious basis—Whether society established for charitable purposes only—Local Government (Financial Provisions, etc) (Scotland) Act 1962, s 4(2)(10). **Scottish Burial Reform and Cremation Society Ltd v Glasgow City Corp** [1967] 3 215, HL.

Educational charity—Hereditaments used for administration and management of property of charity—Whether used for charitable purposes—Rating and Valuation Act 1961, s 11(1). **Aldous v Southwark Corp** [1968] 3 498, CA.

Fund raising activities—Charity for relief of poverty—Shops occupied by charity—Shops used for reception and sorting of articles given to charity and for subsequent sale—Whether shops 'used for charitable purposes'—General Rate Act 1967, s 40(1). **Oxfam v City of Birmingham District Council** [1975] 2 289, HL.

Holiday centre for Derbyshire miners, their wives and families—Provision enabling trustees to admit members of public to surplus accommodation—Admission of public necessary to meet overheads and keep charges to an amount enabling qualified persons to attend and thus served purpose of charity—Registered charity—Whether hereditament 'wholly or mainly used for charitable purposes'—Charities Act 1960, s 5(1)—Rating and Valuation Act 1961, s 11(1). **Wynn v Skegness Urban District Council** [1966] 3 336, ChD.

Loss of right to relief—

Change of identity—Charitable organisation occupying hereditament entitled to limitation of rates—Extensions and new building increasing floor area four times—Boundaries of unit of assessment unaltered—Whether hereditament lost identity owing to extensions of buildings—Rating and Valuation (Miscellaneous Provisions) Act 1955, s 8(2)—Rating and Valuation Act 1925, s 68(1). **Institute of Orthopaedics v Harrow Corp** [1962] 3 964, ChD.

Right to claim relief—

Full amount of rates without claiming relief paid in first year of new valuation list—Whether ratepayer loses right to claim relief in subsequent years—Rating and Valuation (Miscellaneous Provisions) Act 1955, s 8(2). **Waterson v Hendon Borough Council** [1959] 2 760, QBD.

Deduction—

Tithe and tithe rentcharge. *See* **Tithe and tithe rentcharge** (Extinguishment—Compensation—Deduction in respect of rates).

De-rating of freight-transport hereditament—

Hereditament occupied and used for dock purposes as part of dock undertaking—

Undertaking whereof substantial volume of business concerned with unshipping of merchandise not intended for use of undertakers—Wharf—Whether premises forming part of dock undertaking—Rating and Valuation (Apportionment) Act 1928, s 5(3). **South Essex Assessment Committee v Betty & Tom Ltd** [1937] 3 441, CA.

Undertaking whereof substantial volume of business concerned with unshipping of merchandise not intended for use of undertakers—Installations for unshipping and storing oil—Ratepayer selling agent for oil companies—Use of hereditament for dock purposes—Occupation and use of hereditament as part of a dock undertaking—Oil 'intended for the use of' the ratepayer—Rating and Valuation (Apportionment) Act 1928, s 5(1)(c)(3), s 6(3)(b). **Shell-Mex and BP Ltd v Clayton (Valuation Officer)** [1956] 3 185, HL.

De-rating of industrial hereditaments—

Apportionment of net annual value—

Site used for gravel pit and for rubbish tip—Factory and Workshop Act 1901, s 149(4)—Rating and Valuation (Apportionment) Act 1928, s 4(2). **Ham River Grit Co Ltd v Richmond Rating Authority** [1949] 1 286, KBD.

Exclusion from relief of certain hereditaments. *See* Exclusion from relief of certain hereditaments occupied and used as factory or workshop, *post*.

Hereditament occupied and used as factory or workshop. *See* Hereditament occupied and used as factory or workshop, *post*.

RATES (cont)

Distress for rates—

Application for warrant—

Defence—Allegation that assessment increased on defective proposal. **East Barnet Urban District Council v Allen Trenarry (Barnet) Ltd.** [1948] 2 583, KBD.

Jurisdiction—Extent of jurisdiction—Defence by ratepayers' claiming partial relief from rate—No appeal by ratepayers to quarter sessions against the rate—Nothing due if ratepayers entitled to relief—Rating and Valuation (Miscellaneous Provisions) Act 1955, s 8(1)(c)(2). **Evans v Brook** [1959] 2 399, QBD.

Limitation period—Application more than six years after demand—Statutory bar to proceedings—Limitation Act 1939, ss 2(1)(d), 31(1). **China v Harrow Urban District Council** [1953] 2 1296, QBD.

Issue of warrant—

Persons against whom warrant may issue—Person entitled to receive the rent—Rent collected by rent collector—Warrant issued against rent collector—Middlesex County Council (General Powers) Act 1938, s 118(2). **Adams and Watts v Southall Rating Authority** [1943] 1 491, KBD.

Time for issue—Rating period not expired—Whether warrant could issue before period expired—Poor Relief Act 1601, s 2. **Thomson v Beckenham Rating Authority** [1947] 2 274, KBD.

Priority—

Distress for rent and distress for rates. *See* **Distress** (Priority—Distress for rent and distress for rates).

Rent in arrear—

Claim by landlord for rent out of proceeds of distress—Whether distress an execution—Landlord and Tenant Act 1709, s 1. **Potts v Hickman** [1940] 4 491, HL.

Distress warrant—

Issue—

Occupier of part of premises—Liability for whole rate. *See* **Occupation**—Non-occupation of part of premises—Liability for rates for whole premises, *post*.

Drainage rates. *See* **Land drainage** (Drainage rates).

Exclusion from relief of certain hereditaments occupied and used as factory or workshop—

Factory or workshop primarily occupied and used for maintenance of occupier's road vehicles—

Distinguished from reconditioning—Rating and Valuation (Apportionment) Act 1928, s 3(1)(2). **London Transport Executive v Betts (Valuation Officer)** [1958] 2 636, HL.

Purposes of user—primary and substantial purposes—Reconditioning of parts of vehicles—Maintenance of occupier's road vehicles—Whether hereditament as a whole an industrial hereditament—Apportionment between industrial and other use—Rating and Valuation (Apportionment) Act 1928, ss 3(2)(b), 4. **East Yorkshire Motor Services Ltd v Clayton (Valuation Officer)** [1961] 3 758, CA.

Factory or workshop primarily occupied and used for non-factory or workshop purposes—

Building close to but not attached to main factory—'Contiguous'—Building used for storage and distribution—Whether part of industrial hereditament—Rating and Valuation (Apportionment) Act 1928, s 3(1)(3). **James A Jobling & Co Ltd v Sunderland County Borough Assessment Committee** [1944] 1 500, CA.

Research establishment—Use for making and testing prototypes and parts of vehicles—Factory and Workshop Act 1901, s 149—Rating and Valuation (Apportionment) Act 1928, s 3(1) proviso(f). **Harry Ferguson Research Ltd v Dawkins (Valuation Officer)** [1960] 2 283, CA.

Factory or workshop occupied and used for purposes of retail shop—

Canteen situated apart from factory but exclusively for use of employees—Whether part of industrial hereditament—Rating and Valuation (Apportionment) Act 1928, s 3. **Simmonds Aerocessories (Western) Ltd v Assessment Committee** [1944] 1 264, KBD.

Factory or workshop primarily occupied and used for purposes of retail shop—

Canteen solely for use of employees—Whether part of industrial hereditament—Factory and Workshop Act 1901, s 149(4)—Rating and Valuation (Apportionment) Act 1928, s 3. **London Co-operative Society Ltd v Southern Essex Assessment Committee** [1941] 3 252, KBD.

Cleaners and dyers—Work of the same nature as repair work—Articles received from and delivered to customers themselves—Whether 'retail shop'—Rating and Valuation (Apportionment) Act 1928, s 3. **Ritz Cleaners Ltd v West Middlesex Assessment Committee** [1937] 2 368, CA.

Laundry—Accommodation for public resort—Customers leaving articles in basket and collecting at office—Customers leaving and collecting articles on slab—Delivery by van—Whether laundry used primarily for purposes of retail shop—Rating and Valuation (Apportionment) Act 1928, s 3(1)(4). **Almond (Valuation Officer) v Heathfield Laundry (Birmingham) Ltd** [1960] 3 700, CA.

Motor service depot—Partly used as retail shop—Work done to the order of insurance companies—Whether retail repair work—Rating and Valuation (Apportionment) Act 1928, s 3(1)(4). **Meriden Rural District Council v Standard Motor Co Ltd** [1957] 3 222, CA.

Printing works with shop—Whether excluded from relief—Rating and Valuation (Apportionment) Act 1928, s 3(1). **McGowan v Assessment Committee for Osgoldcross Assessment Area, West Riding of Yorkshire** [1936] 2 170, KBD.

Sawmills, timberyard and office—Rating and Valuation (Apportionment) Act 1928, s 3(1)(4). **Dolton Bournes & Dolton Ltd v Osmond (Valuation Officer)** [1955] 2 258, CA.

Exemption—

Agricultural land—

Exception—Land kept or preserved mainly or exclusively for purposes of sport or recreation—Land partly used for training racehorses—Whether separately rateable hereditament—Rating and Valuation (Apportionment) Act 1928, s 2. **Jarvis v Cambridgeshire Rural Assessment Area Assessment Committee** [1938] 4 186, KBD.

RATES (cont)

Exemption (cont)—

Agricultural land (cont)—

Exception—Land used as racecourse—Land partly used for purposes of motor cycle track racing but otherwise used as pasture land—Whether separately rateable hereditament—Rating and Valuation (Apportionment) Act 1928, s 2(2). **Wimborne and Cranborne Rural District Council v East Dorset Assessment Committee** [1940] 3 201, CA.

Land used as arable meadow or pasture ground only—Field used for grazing and turf cutting—Whether exempt—Rating and Valuation (Apportionment) Act 1928, s 2(2)—Local Government Act 1929, s 67(1). **Meriden and Solihull Rating Authority v Tyacke** [1950] 1 939, KBD.

Nursery grounds—Area used for turf cutting—Whether 'nursery grounds'—Rating and Valuation (Apportionment) Act 1928, s 2(2)—Local Government Act 1929, s 67(1). **Butser Turf and Timber Co Ltd v Petersfield Rating Authority** [1950] 1 288, KBD.

Buildings occupied together with agricultural land and used solely in connection with agricultural operations thereon—

Agricultural operations—Pig progeny testing station—Ploughing of land unconnected with buildings—Whether buildings exempt—Rating and Valuation (Apportionment) Act 1928, s 2(2). **National Pig Progeny Testing Board v Greenall (Valuation Officer)** [1960] 3 556, CA.

Agricultural operations thereon—Dairy—Treatment of milk from neighbouring farm—Dairy buildings not entitled to exemption—Rating and Valuation (Apportionment) Act 1928, s 2(2). **Perrins v Draper** [1953] 2 863, CA.

Occupied—Used solely in connection with—Grain drying plant—Provision by farmers' syndicate—Used to dry their grain—Controlled by management committee—Whether plant agricultural building within—Rating and Valuation (Apportionment) Act 1928, s 2(2). **Farmers' Machinery Syndicate (11th Hampshire) v Shaw (Valuation Officer)** [1961] 1 285, CA.

Occupied together with agricultural land—Rating and Valuation (Apportionment) Act 1928, s 2(2). **W & J B Eastwood Ltd v Herrod (Valuation Officer)** [1970] 1 774, HL.

Occupied together with agricultural land—Used solely in connection with agricultural operations thereon—Broiler houses—Adjoining land used for isolation, sterilising equipment and storing litter but not for 'poultry farming'—Not agricultural land—Broiler houses on farm land—No interconnection of farming and broiler house operations—Rating and Valuation (Apportionment) Act 1928, s 2(2). **Gilmour (Valuation Officer) v Baker-Carr** [1962] 3 230, CA.

Used solely in connection with agricultural operations thereon—Bull pens, stores, laboratory, offices—Artificial insemination of cattle—Collection of semen from bulls—Whether buildings 'agricultural buildings'—Rating and Valuation (Apportionment) Act 1928, s 2(2)—Local Government Act 1929, s 67(1). **Thompson v Milk Marketing Board** [1952] 2 344, CA.

Buildings occupied together with agricultural land and used solely in connection with agricultural operations thereon—

Used solely in connection with agricultural operations thereon—Shed used as garage—Car used partly for farm and partly for private purposes—Whether shed 'agricultural building'—Rating and Valuation (Apportionment) Act 1928, s 2(2)—Agricultural Rates Act 1929, s 1(1). **Parry v Anglesey Assessment Committee** [1948] 2 1060, KBD.

Used solely in connection with agricultural operations thereon—Test to be applied—Poultry houses—Layer houses, hatchery, broiler houses, packing station, mill—Use for production of broiler chickens—Hens not running on land—Cockerels running on land for 12 out of 64 weeks of life—Land growing four per cent of feeding ingredients—Use of litter for manure on land—Poultry houses used for different operation from land—Test not use of land and buildings for combined agricultural operation—Rating and Valuation (Apportionment) Act 1928, s 2(2). **W & J B Eastwood Ltd v Herrod (Valuation Officer)** [1970] 1 774, HL.

Charity—

Northern Ireland. *See* Northern Ireland (Rates—Exemption—Charity).

Land belonging to a vicarage—

Exemption from parochial taxes under Inclosure Act—Exemption from general rate imposed by Rating and Valuation Act 1925, s 2—Rating and Valuation Act 1925, ss 2(1)(2)(3)(a), 64(1)(b)(2)(a)(b). **Wiltshire County Valuation Committee v Boyce** [1948] 1 694, CA.

Land owned by public hospital—

New South Wales. *See* New South Wales (Rates—Exemption—Land owned by public hospital).

Palestine. *See* Palestine (Rating).

Places of public religious worship—

Place 'exclusively appropriated to public religious worship'—Rooms adjoining gospel hall and used for children's educational, recreational and religious activities—Sunday school—Poor Rate Exemption Act 1833, ss 1, 2—Sunday and Ragged Schools (Exemption from Rating) Act 1869, s 2. **Rogers v Lewisham Borough Council** [1951] 2 718, CA.

Public—Mormon temple—Use for special ceremonies—Admission only of Mormons of good standing—Temple not a place of 'public' religious worship within—Rating and Valuation (Miscellaneous Provisions) Act 1955, s 7(2). **Church of Jesus Christ of Latter-Day Saints v Henning (Valuation Officer)** [1963] 2 733, HL.

Society instituted for purposes of fine arts exclusively and supported by annual voluntary contributions—

Music college—Unconditional legacies benefactions for special purposes—Gift for scholarships and prizes at a college gifts in kind—Government grants—Percentage of total income—Whether society supported by 'annual voluntary contributions'—Scientific Societies Act 1843, s 1. **Cane (Valuation Officer) v Royal College of Music** [1961] 2 12, CA.

RATES (cont)

Exemption (cont)—

Society instituted for purposes of fine arts exclusively and supported by annual voluntary contributions (cont)—

Society for preservation and promotion of folk dances, songs and music—Whether for purposes of 'fine arts' exclusively—Scientific Societies Act 1843, s 1. **O'Sullivan (Valuation Officer) v English Folk Dance and Song Society** [1955] 2 845, CA.

Society instituted for purposes of literature exclusively and supported by annual voluntary contributions—

Subscription library—Benefit confined to members—Whether instituted for purposes of literature exclusively—What were annual voluntary contributions—What proportion sufficient to make society one supported in part by such contributions—Scientific Societies Act 1843, s 1. **London Library v Cane (Valuation Officer)** [1959] 3 726, CA.

Society instituted for purposes of science exclusively and supported by annual voluntary contributions—

Institute for the advancement of fuel technology—Object also to uphold the status of members—Authorised purposes—Whether exempt—Scientific Societies Act 1843, s 1. **Institute of Fuel v Morley (Valuation Officer)** [1955] 3 834, HL.

Institution of mechanical engineers—Development of mechanical engineering—Subscriptions of members—Advantages of membership of organisation of professional men—Whether institution for 'purposes of science exclusively'—Whether subscriptions were 'voluntary' contributions—Scientific Societies Act 1843, s 1. **Institution of Mechanical Engineers v Cane (Valuation Officer)** [1960] 3 715, HL.

Laundries research association—Company limited by guarantee—Advice to members and courses for students—Government grant—Whether association instituted for 'purposes of science exclusively'—Whether supported by 'voluntary contributions'—Scientific Societies Act 1843, s 1. **British Launderers Research Assn v Central Middlesex Assessment Committee and Hendon Rating Authority** [1949] 1 21, CA.

Society instituted for purposes of science, literature or fine arts exclusively and supported by annual voluntary contributions—

Institution for 'promotion and advancement of naval and military science and science and literature'—Supported by Government grant and members' subscriptions—Whether instituted for the 'purposes of science, literature or the fine arts exclusively' and supported by voluntary contributions so as to be exempt from rating—Scientific Societies Act 1843, s 1. **Westminster City Council v Royal United Service Institution** [1938] 2 545, KBD.

School incorporated 'to further research in...the languages of Eastern and African peoples'—Supported in part by annual voluntary contributions—Whether instituted for 'purposes of science, literature or the fine arts exclusively'—Scientific Societies Act 1843, s 1. **School of Oriental and African Studies v Westminster City Rating Authority** [1940] 2 537, KBD.

Farmhouse. *See* **Income tax** (Deduction in computing profits—Domestic or private expenses—Farming).

Gas board—

Rate period beginning after 31st March 1952 and before 1st April 1956—

Adjustment to new basis of assessment for rate periods beginning after 31st March 1952 and before 1st April 1956—Estoppel of local authority—Gas undertaking of local authority nationalised—Gas showrooms and offices in town hall formerly used for gas undertaking of local authority let to gas board by local authority—Lease providing for payment of rates by board—No separate assessment of premises—Contributions to rates formerly made by gas committee of local authority—Payments made by board under lease on account of rates of amounts equal to rates on value on which gas committee's contributions had been computed—No formal demand of rates from board—Whether sums paid by board were 'rates actually levied' on board by local authority for purposes of Rating and Valuation (Miscellaneous Provisions) Act 1955, s 6, Sch 4, para 2(1). **North Western Gas Board v Manchester Corpn** [1963] 3 442, CA.

Calculation of amount of rates leviable—Repayment or allowance of difference between amount leviable and amount actually levied—Rating and Valuation (Miscellaneous Provisions) Act 1955, Sch 4, para 2(1). **West Hartlepool Corpn v Northern Gas Board** [1957] 1 394, QBD.

General rate fund—

Payment out of fund. *See* **Local government** (Expenditure—Payment out of general rate fund).

Hereditament—

Hereditament occupied and used as factory or workshop. *See* Hereditament occupied and used as factory or workshop, *post*.

Separate hereditament. *See* Separate hereditament, *post*.

Hereditament occupied and used as factory or workshop—

Premises where adapting for sale of any article—

Cleaning and cooling of milk for transport—Factory and Workshop Act 1901, s 149(1)(c)(iii)—Rating and Valuation (Apportionment) Act 1928, s 3(1). **Wiltshire County Valuation Committee v London Co-operative Society Ltd** [1950] 1 937, KBD.

Collation of greetings cards—Rating and Valuation (Apportionment) Act 1928, s 3(1)(2)—Factory and Workshop Act 1901, s 149(1). **Wilson Bros Ltd v Edwards (Valuation Officer)** [1958] 3 243, CA.

Egg packing station—Rating and Valuation (Apportionment) Act 1928, s 3(1). **A Richardson & Son v Middlesbrough Assessment Committee** [1947] 1 884, KBD.

Packaging process—Motor car parts made fit for use abroad—Protection against climatic conditions—Factory and Workshop Act 1901, s 149(1)(c)(iii)—Rating and Valuation (Apportionment) Act 1928, s 3(1). **Cockram v Tropical Preservation Co Ltd** [1951] 2 520, CA.

Slaughtering—Treatment of carcases—Factory and Workshop Act 1901, s 149(1)—Rating and Valuation (Apportionment) Act 1928, s 3(1). **Fatstock Marketing Corpn Ltd v Morgan (Valuation Officer)** [1958] 1 646, CA.

RATES (cont)

Hereditament occupied and used as factory or workshop (cont)—

Premises where adapting for sale of article—

Sorting grading and matching of skins—Whether an 'industrial hereditament'—Rating and Valuation (Apportionment) Act 1928, s 3(1)(2)—Factory and Workshop Act 1901, s 149(1). **Hudson's Bay Co v Thompson (Valuation Officer)** [1959] 3 150, HL.

Premises where adapting for sale of any article—

Timber—Natural drying of timber—Factory and Workshop Act 1901, s 149(1)—Rating and Valuation (Apportionment) Act 1928, s 3(1). **Buncombe (Valuation Officer) v Baltic Sawmills Co Ltd** [1961] 3 272, CA.

Wholesale distributive business—Sorting, identification and arrangement of goods—Whether an industrial hereditament—Factory and Workshop Act 1901, s 149(1)(c)(iii)—Rating and Valuation (Apportionment) Act 1928, s 3(1). **Davis Cohen & Sons Ltd v Hall** [1952] 1 157, CA.

Premises where making of an article—

Premises used for testing aeroplane propellers and correcting minor faults—Whether an industrial hereditament—Factory and Workshop Act 1901, s 149—Rating and Valuation (Apportionment) Act 1928, s 3(1). **Acton Corp v West Middlesex Assessment Committee** [1949] 1 409, KBD.

Premises wherein manual labour exercised by way of trade—

Premises occupied by non-profit-making company—Company carrying on club—Services in connection with motoring provided for club members—Premises used by company for upkeep of its own road vehicles and their component parts—Whether work done 'by way of trade'—Factory and Workshop Act 1901, s 149(1)(c)—Rating and Valuation (Apportionment) Act 1928, s 3(1)(2)(b) (as amended by Local Government Act 1929, s 69). **Automobile Proprietary Ltd v Brown (Valuation Officer)** [1955] 2 214, CA.

Lands Tribunal—

Appeal—

Appeal from decision of local valuation court—Interim decision—Appeal lay only against final decision—Local Government Act 1948, ss 48(4), 49(1). **Oswestry Corp v Hudd (valuation officer)** [1966] 1 490, CA.

Appeal from decision of local valuation court—Onus of proof—Tribunal requiring to be satisfied as to something wrong in findings below—Lands Tribunal Rules 1956 (S I 1956 No 1734), r 45(4). **Sole v Henning (Valuation Officer)** [1959] 3 398, CA.

Jurisdiction—Jurisdiction to hear valuation officer—Appeal by ratepayer from decision of local valuation court—No cross-appeal by valuation officer—Notice by valuation officer of intention to appear on hearing of appeal—Application by valuation officer for assessment directed by local valuation court to be increased—Local Government Act 1948, ss 48(4), 49(1)—Lands Tribunal Act 1949, s 1(3)(e)—Lands Tribunal Rules 1949 (S I 1949 No 2263), rr 9(1), 38(4). **Ellerby v March (Valuation Officer)** [1954] 2 375, CA.

Jurisdiction—Method of valuation agreed by parties—Evidence supporting value higher than that yielded by the agreed method—Power to fix higher figure—Local Government Act 1948, s 48(4). **Morecambe and Heysham Corp v Robinson (Valuation Officer)** [1961] 1 21, CA.

Case stated—

Form—Title of case. **National Pig Progeny Testing Board v Greenall (Valuation Officer)** [1960] 3 556, CA.

Evidence—

Evidence after decision reserved—Discretion of tribunal to refuse to hear evidence that might have been adduced at hearing. **Wexler v Playle (Valuation Officer)** [1960] 1 338, CA.

Local valuation court—

Appeal—

Res judicata—Scientific society's claim for exemption—Claim upheld on appeal for previous valuation list—Decision not appealed—Circumstances admitted to be unchanged—Whether valuation officer estopped from opposing claim. **Society of Medical Officers of Health v Hope (Valuation Officer)** [1960] 1 317, HL.

Withdrawal of objection to proposal to alter valuation list—Effect—Valuation court not entitled to proceed with hearing of appeal—Local Government Act 1948, s 41(6). **R v East Norfolk Local Valuation Court, ex parte Martin** [1951] 1 743, KBD.

Withdrawal of proposal by valuation officer after objection lodged—Rating authority intending to appear in support—Withdrawal valid—Local Government Act 1948, s 48(4). **Re Applications by Brixham Urban District Council** [1954] 3 561, QBD.

Matrimonial home. *See* Husband and wife (Matrimonial home—Rates).

Metropolis—

Assessment—

Provisional list—Alteration in value of hereditament—Reduction in value of club premises due to war conditions—General alteration in the values of all classes of hereditaments—Rating and Valuation (Postponement of Valuations) Act 1940, s 1(2)(b). **Westminster Assessment Committee v Conservative Club** [1944] 1 104, HL.

Supplemental list—Alteration in value of hereditament—Dwelling-house let to one tenant changed into tenement house let to two tenants—Increased rent—Whether 'from any cause increased in value'—Valuation (Metropolis) Act 1869, s 47. **R v Camberwell Borough Assessment Committee, ex parte Metropolitan Housing Corp Ltd** [1939] 2 283, KBD.

New South Wales. *See* New South Wales (Rates).

Owner's rate—

Drainage rates. *See* Land drainage (Drainage rates—Owner's rate).

Payment of rates—

Full rate—

Reduced to 'composition rates and rents' if paid within prescribed time—Second half of reduced amount due on a Sunday—Demand note stating Monday as day for payment—Cheque posted on Monday—Whether payment in time—Validity of demand note. **Joynson's Executors v Liverpool Corp** [1938] 4 183, KBD.

RATES (cont)

Plant and machinery deemed to be part of hereditament—

Cotton-mill—

Production discontinued—Occupation only for preservation of process machinery and plant—Beneficial occupation—Rating and Valuation Act 1925, s 24. **Townley Mill Co (1919) Ltd (in voluntary liquidation) v Oldham Assessment Committee** [1937] 1 11, HL.

Primary transformation of power—

Motor generators used as transforming plant—Cells for electrolytic process—Rating and Valuation Act 1925, s 24, Sch III, Cases 1(a), 4—Plant and Machinery (Valuation for Rating) Order 1927 (S R & O 1927 No 480). **South Wales Aluminium Co Ltd v Assessment Committee for the Neath Assessment Area** [1943] 2 587, KBD.

Production and generation of power—

Electric power converted into hydraulic and pneumatic power—Whether conversion plant 'pumping engines for hydraulic power' 'used in connection with... the generation... of power'—Rating and Valuation Act 1925, s 24(1), Sch 3—General Rate Act 1967, s 21(1), Sch 3—Plant and Machinery (Rating) Order 1960 (S I 1960 No 122), Class 1A. **Chesterfield Tube Co Ltd v Thomas (Valuation Officer)** [1971] 3 733, CA.

Such plant or combination of plant and machinery as is or is in nature of building or structure—

Ovens—Chambers for conditioning or treatment—Trays attached to endless belt passing through oven—Whether in the nature of a structure—Plant and Machinery (Valuation for Rating) Order 1927 (S R & O 1927 No 480), Sch, Class 4—Rating and Valuation Act 1925, s 24(1). **W Collier Ltd v Fielding (Valuation Officer)** [1958] 1 694, CA.

Structure—Plant conveyed to site in one piece—Whether feat of engineering involved not a test—Catwalks and connecting pipes—Constituent parts of a process boiler separately rateable—Rating and Valuation Act 1925, s 24(1), (5)—Plant and Machinery (Valuation for Rating) Order 1927 (S R & O 1927 No 480), Sch, Class 4. **BP Refinery (Kent) Ltd v Walker (Valuation Officer)** [1957] 1 700, CA.

Tank—Underground petrol tank in brick and concrete compartment—Whether whole or container only constituted a tank within Plant and Machinery (Valuation for Rating) Order 1927, (S R & O 1927 No 480), Sch, Class 4—Rating and Valuation Act 1925, s 24(1). **Shell-Mex and BP Ltd v Holyoak (Valuation Officer)** [1959] 1 391, HL.

Unit basis—Contractor's theory—Blast and fixed melting furnaces and coke ovens—Tilting melting furnaces and gas and blast mains—'Structure'—'In nature of structure'—Movability—Rating and Valuation Act 1925, s 22(1)(b)—Plant and Machinery (Valuation for Rating) Order 1927 (S R & O 1927 No 480), Sch, Class (4). **Cardiff Rating Authority v Guest Keen Baldwins Iron & Steel Co Ltd** [1949] 1 27, CA.

Transformers and distribution boards—

Main transmission of power—Rating and Valuation Act 1925, s 24, Sch III—Plant and Machinery (Valuation for Rating) Order 1927 (S R & O 1927 No 480). **Richard Thomas & Co Ltd v The County Valuation Committee for County of Monmouth and the West Monmouthshire Assessment Committee** [1944] 1 417, CA.

Proposal for alteration of current valuation list—

Alteration in value since commencement of rating year—

Time at which value to be ascertained—Rating and Valuation Act 1925, s 37(1)(7)(10). **Barrett and Russell's Gravesend Brewery Ltd v Gravesend Assessment Committee** [1941] 2 308, KBD.

Appearance before assessment committee—

County valuation committee—Officer authorised by general resolution of valuation committee—Rating and Valuation Act 1925, s 31(9). **R v Surrey (North Eastern Area) Assessment Committee, ex parte Surrey County Valuation Committee** [1947] 2 276, KBD.

Electricity hereditament—

Power to amend deleted assessment—Rating and Valuation Act 1925, s 20(1)—Local Government Act 1948, s 92(3), (4)—Rating and Valuation (Transitional) Regulations 1949 (S I 1949 No 2313), reg 3(1). **R v Cockram (Valuation Officer), ex parte East Midlands Electricity Board** [1952] 2 44, QBD.

Large scale revaluation—

Proposals by county valuation committee to increase large proportion of assessments in area—Systematic examination of all assessments with a view to revaluation—Validity of large scale revaluation—Quarter Sessions Act 1849, s 11—Rating and Valuation Act 1925, ss 18, 19, 21(2), 31(3), 37(1)—Rating and Valuation (Postponement of Valuations) Act 1938, s 1—Rating and Valuation (Postponement of Valuations) Act 1940, s 1(3). **Pratt v North West Norfolk Assessment Committee** [1947] 1 920, HL.

Notice of proposal to be given to occupier—

Notice of proposal served on owner of premises and also on occupier of premises—Attendance of owner at hearing before the assessment committee—Whether owner had locus standi in the matter—Appeal to quarter sessions by owner from the committee's decision—Whether quarter sessions had jurisdiction to entertain appeal—Rating and Valuation Act 1925, s 37(1)(2)(3)(4)(5)(7)(8). **Gartsides (Brookside Brewery) Ltd and Bents Brewery Co Ltd v Upper Agbrigg Assessment Committee, Rating Authority for the Urban District of Saddleworth and County Valuation Committee of the West Riding of Yorkshire** [1945] 1 338, CA.

Occupier—Whether occupier of whole undivided hereditament entitled to notice of proposed amendment affecting notional hereditaments of parts of whole—Rating and Valuation Act 1925, s 37(1)(3)(7). **R v West Derby Assessment Committee, ex parte Mersey Docks and Harbour Board and Liverpool Rating Authority** [1938] 4 110, KBD.

RATES (cont)

Proposal for alteration of current valuation list (cont)—

Person aggrieved—

Rating authority—Authority concluding that all properties of particular type were or might be under valued—Whether authority a 'person aggrieved'—Rating and Valuation Act 1925, s 37(2). **R v Surrey (Mid-Eastern Area) Assessment Committee, ex parte Merton and Morden Urban District Council** [1948] 1 856, KBD.

Power to make proposal—

Amendment of current valuation list by rating authority—Rating and Valuation Act 1925, s 37—Rating and Valuation (Postponement of Valuations) Act 1940. **Murphy Radio Ltd v Welwyn Garden City Rating Authority** [1943] 2 16, KBD.

Numerous hereditaments wrongly valued in current list—No change in conditions effecting general rise in values—Revaluation by rating authority—Whether new list—'Person aggrieved'—Rating and Valuation Act 1925, s 37(1), (3). **R v Worthing Borough Council and Horsham and Worthing Assessment Committee, ex parte Burgess** [1937] 2 681, KBD.

Proposal for insertion of assessment in list—Rating authority's power to make—Local Government Act 1948, s 40(1)(b). **John Walsh Ltd v Sheffield City Council and Tranter (Valuation Officer)** [1957] 3 353, CA.

Proposal—

Meaning—Objection to assessments as 'unfair and incorrect'—Proposed amendment by valuation committee—No grounds specified—Whether 'a proposal for the amendment of the list'—Person aggrieved—Rating and Valuation Act 1925, s 37(1), (2). **R v Thanet and District Assessment Area Assessment Committee and Kent County Valuation Committee, ex parte Isle of Thanet Gas Light and Coke Co** [1939] 2 489, KBD.

Proposal based on accounts five years old—

Automatic percentage increase of previous value—Validity—Rating and Valuation Act 1925, s 37. **Norwich Rating Authority v Norwich Assessment Committee and Fountain** [1941] 3 225, KBD.

Proposal by rating authority—

Delegation of rating authority's powers to finance committee—Ratification of proposal by rating authority—Validity of proposal—Rating and Valuation Act 1925, s 37(1). **R v Heston and Isleworth Rating Area Authority and South Middlesex Assessment Committee, ex parte Conti** [1941] 2 116, KBD.

Specification of grounds for proposal—

Amount of increase—Whether necessary to state on form amount of proposed increase—Rating and Valuation Act 1925, s 37(2). **R v Surrey (Mid-Eastern Area) Assessment Committee, ex parte Merton and Morden Urban District Council** [1948] 1 856, KBD.

Grounds on which proposed amendment supported—Indication of extent to which existing valuations incorrect and unfair—Form indicating proposed revised assessment—Whether grounds of proposal sufficiently indicated—Rating and Valuation Act 1925, s 37(2)(b). **R v Winchester Area Assessment Committee, ex parte Wright** [1948] 2 552, CA.

Need to indicate clearly what rating authority proposing—Rating and Valuation Act 1925, s 37(2). **R v Reading Assessment Committee, ex parte McCarthy E Fitt Ltd** [1948] 1 194, KBD.

Rateable occupation—

Building occupied in parts—

Occupation by lodger or tenant—Owner occupying rest of house—Control by owner—Assessment of parts separately—Rating and Valuation Act 1925, s 23(1). **Helman v Horsham and Worthing Assessment Committee** [1949] 1 776, CA.

Chattels enjoyed with land—

Disused colliery tip—No finding as to tip's constituting part of the land—Purchasers' (ratepayers') exclusive right to remove materials from tip except red ash, which was reserved to vendor—Tip, viewed as chattels, in rateable occupation—Purchasers' exclusive or paramount occupation. **Ryan Industrial Fuels Ltd v Morgan (Valuation Officer)** [1965] 3 465, CA.

Residential caravan—Pitch on caravan operators' site—Caravan in position more than a year—Rateability of caravan—Partial control by site operators—Paramount occupation—Separate occupation by caravan owner. **Field Place Caravan Park Ltd v Harding (Valuation Officer)** [1966] 3 247, CA.

Hereditaments owned by local authority—

Used for public benefit—Swimming pool, concert hall and similar activities producing considerable income. **North Riding of Yorkshire County Valuation Committee v Borough of Redcar and Guisborough Assessment Committee** [1942] 2 589, KBD.

Ingredients of occupation—

Benefit to possessor—Art gallery—Trust of gallery for enjoyment by the public in perpetuity—Gallery vested in local authority—Whether trusts allowed any potentiality of beneficial occupation by local authority. **Kingston-upon-Hull Corp v Clayton (Valuation Officer)** [1961] 3 118, HL.

Exclusive occupation—Common land—Golf course—Crown land subject to rights of common—Crown licence to golf clubs to maintain and use golf courses—No power to exclude commoners or public. **Peak (Valuation Officer) v Burley Golf Club** [1960] 2 199, CA.

Exclusive occupation—Yacht mooring—Whether occupation exclusive. **Bradshaw v Davey** [1952] 1 350, KBD.

Permanence of occupation—Temporary occupation—Occupation permanently affecting contours and appearance of site—Building contractors—Borrow pit—Purpose of occupation to remove earth from site for purpose of constructing motorway—Occupation for less than 12 months—Large quantities of soil removed within that period—Whether contractors in rateable occupation of site. **Dick Hampton (Earth Moving) Ltd v Lewis (Valuation Officer)** [1975] 3 946, CA.

RATES (cont)

Rateable occupation (cont)—

Joint rateable occupation—

Husband separated from wife—Wife remaining in actual occupation of matrimonial home—Husband remaining rateable occupier and paying wife interim alimony—Husband informing rating authority that future demands for rates to be served on wife—Whether rateable occupation could have changed from that of the husband to a joint rateable occupation. **Malden and Coombe Corpn v Bennett** [1963] 2 527, QBD.

Non-occupation of part of premises—

Liability for rates for whole premises—Description in valuation list—Need to show description includes on its face property which ratepayer does not occupy—Description of premises as 'workshop and store'—Premises consisting of three separate structures—House and two factories—Ratepayer occupying one factory and part of house—Whether ratepayer liable for rates for whole premises. **London Borough of Camden v Herwald** [1976] 2 808, QBD.

Occupation by master or servant—

Rateable occupier—Test to identify. **Northern Ireland Commissioner of Valuation v Fermanagh Protestant Board of Education** [1969] 3 352, HL.

Occupation by receiver—

Possession—Blocks of flats owned by companies—Tenants paying rent inclusive of rates—Rates in arrears—Order appointing receiver and manager—Receiver entered in rate-book of borough council as new rateable occupier—No appeal against entry—Whether change of occupation of premises—Liability to be rated—Poor Rate Assessment and Collection Act 1869, s 16. **Gyton v Palmour** [1944] 2 540, KBD.

Occupation by relatives—

Husband and wife—Former matrimonial home—Wife in occupation by agreement—Husband agreeing to pay rates—Nature of wife's right to occupation—Licensor/licensee relationship—Actual and exclusive occupation. **Mourton v London Borough of Hounslow** [1970] 2 564, QBD.

Husband and wife—Former matrimonial home—Husband leaving wife in home—Bankruptcy of husband—Wife remaining in home—Effect of bankruptcy—Husband's continuing obligation to provide for wife—Whether husband in rateable occupation. **London Borough of Hounslow v Peake** [1974] 1 688, QBD.

Husband and wife—Husband separated from wife—Wife allowed to live in husband's father's house rent free—Whether husband liable for rates. **Cardiff Corpn v Robinson** [1956] 3 56, QBD.

Owner occupier removed to mental institution—Order of master in lunacy authorising wife to occupy house rent free on payment of rates—Wife not party to order, but continuing to occupy house with knowledge thereof. **Robinson v Taylor** [1948] 1 291, KBD.

Occupation by servant or agent—

Gas research station—Area gas board conducting research for Gas Council—Whether Gas Council were occupiers. **Solihull Corpn v Gas Council** [1962] 1 898, HL.

Necessity for occupation by servant—Obligation of servant to reside on premises, and residence of material assistance to master, but no necessity for residence for doing the work of the employment—Church officer, employee of church board, responsible for looking after church building and performing duties in church, residing in house owned by church board adjacent to church and forming part of same building—Church board in rateable occupation of house for purpose of rating relief—House also 'wholly or mainly used for charitable purposes', although a residence only for church officer—Local Government (Financial Provisions etc) (Scotland) Act 1962, s 4(2). **Glasgow City Corpn v Johnstone** [1965] 1 730, HL.

Person liable to rates—

Occupier—Property of syndicate—Control by committee of syndicate. **Farmers' Machinery Syndicate (11th Hampshire) v Shaw (Valuation Officer)** [1961] 1 285, CA.

Person named in valuation list—Onus of showing not in rateable occupation—Husband separated from wife—Wife continuing to occupy former matrimonial home—General Rate Act 1967, s 97(1). **Des Salles d'Epinoix v Royal Borough of Kensington and Chelsea** [1970] 1 18, QBD.

Playing field vested in local authority—

Acquisition by deed—Trust for perpetual use by public—Restriction on user by public ancillary to management—Cricket and football pitches and tennis courts let to clubs—Temporary exclusion of public. **Burnell v Downham Market Urban District Council** [1952] 1 601, CA.

Premises left empty—

Intention to occupy—Bungalows advertised to be let furnished or unfurnished—Whether owner in beneficial occupation—Liability to be rated. **Bayliss v Chatters** [1940] 1 620, KBD.

Intention to occupy—Charity—Ecclesiastical corporation—Accommodation held available to provide residence for minister of religion—House provided by church as official residence of minister—House vacated by retiring minister—Held available for successor—Successor not appointed until 11 months later—Whether house unoccupied during interim period—General Rate Act 1967, ss 17(1), 40(1), (9), Sch 1, para 2(f). **Bexley Congregational Church Treasurer v London Borough of Bexley** [1972] 2 662, CA.

Intention to occupy—Lease of unfurnished dwelling-houses taken in case of emergency—Houses empty and unused—Whether rateably occupied. **The Mayor, Aldermen and Councillors of the Metropolitan Borough of Hampstead v Associated Cinema Properties Ltd** [1944] 1 436, CA.

Public park—

Absence of formal 'dedication' to the public—Acquisition for use as public walks and pleasure grounds—Powers of sale and leasing ancillary to use. **Blake (Valuation Officer) v Hendon Corpn** [1961] 3 601, CA.

RATES (cont)

- Rateable occupation (cont)—
 - Public park (cont)—
 - Refreshment pavilion—Letting to ice-cream merchant—Refreshments for the use of persons resorting to the park only—Duty to keep open during specified hours—Occupation ancillary to that of the park. **Sheffield Corpn v Tranter (Valuation Officer)** [1957] 2 583, CA.
- Temporary structures—
 - Builders' huts assembled and used on building site—Whether part of rateable hereditament. **London County Council v Wilkins (Valuation Officer)** [1956] 3 38, HL.
 - Site occupied for purpose of carrying out works contract—Temporary structures erected, and used, by contractors on site of aerodrome under construction—Rating and Valuation Act 1925, s 37(10). **John Laing and Son Ltd v Kingswood Assessment Committee** [1949] 1 224, CA.
- Warehouse temporarily unused—
 - Alterations preparatory to intended use—Purchase of warehouse premises for use as a bonded store—Alterations to premises—No use of premises as bonded store until after alterations were completed—Whether premises 'unoccupied' during period of alteration—Local Government (Scotland) Act 1947, s 243(1) (as amended by Valuation and Rating (Scotland) Act 1956, s 44, Sch 7, Part 3), s 379(1). **Arbuckle Smith & Co Ltd v Greenock Corpn** [1960] 1 568, HL.
- Rateable value—
 - House—
 - Leasehold enfranchisement. *See* **Landlord and tenant** (Leasehold enfranchisement—House—Rateable value).
 - Protected tenancy. *See* **Rent restriction** (Rateable value).
- Recovery of rates—
 - Recovery otherwise than by distress—
 - Whether action lies. **Liverpool Corpn v Hope** [1938] 1 492, CA.
- Relief—
 - Air-raid protection works—
 - Reduction of area available for business purposes—Reduction in assessment—Rating and Valuation (Air-Raid Works) Act 1938, s 1(1). **Waterlow & Sons Ltd v Assessment Committee for Shoreditch** [1942] 1 669, KBD.
 - Charity. *See* Charitable and other organisations, *ante*.
- Dwelling-house—
 - Hereditament used wholly for the purpose of a private dwelling or private dwellings—House containing flats let to holiday makers—Rateable occupier carrying on business of letting flats—Whether house used wholly for purpose of a private dwelling—Whether occupier entitled to reduction in rate levied—General Rate Act 1967, ss 48(1), 115(1), Sch 13, paras 1, 2. **Skittrall v South Hams District Council** [1976] 3 1, ChD.
 - Structures supplied for use of invalids, disabled or handicapped persons. *See* Structures supplied for use of invalids, disabled or handicapped persons, *post*.
- Remission of rate—
 - Poverty of ratepayer—
 - War damage to property rated—Remission of Rates (London) Act 1940. **Stepney Borough Council v Woolf** [1943] 1 64, KBD.
- Separate hereditament—
 - Two properties in same occupation—
 - Adjoining sites—Occupation of each in different capacity—Contractors engaged in building motorway—Contractors using site adjoining motorway as borrow pit to remove earth for construction of motorway—Site of borrow pit and motorway used as one and in appearance largely indistinguishable—Whether motorway and borrow pit separate hereditaments. **Dick Hampton (Earth Moving) Ltd v Lewis (Valuation Officer)** [1975] 3 946, CA.
 - Caravan sites—Two caravan sites in one occupation—Separation by quarry side—Valuation officer unaware of upper site when lower assessed—Proposal to assess upper site separately—Construction of entry in valuation list. **Sussex Caravan Parks Ltd v Richardson (Valuation Officer)** [1961] 1 731, CA.
 - Premises on opposite sides of highway—Bakery and repair depot—Whether one or two hereditaments. **Gilbert (Valuation Officer) v S Hickinbottom & Sons Ltd** [1956] 2 101, CA.
 - Works and offices—Separation by occupier's agricultural land—Connection by occupier's private road (150 yards long)—Private road serving other properties of occupier—Whether two properties separate hereditaments. **Butterley Co Ltd v Tasker (Valuation Officer)** [1961] 1 574, CA.
- Structures supplied for use of invalids, disabled or handicapped persons—
 - Structure—
 - Blind persons' home—Principal building or only annexe or adjunct thereof—Institution with main two-storey building—Rating and Valuation (Miscellaneous Provisions) Act 1955, s 9(1). **Almond (Valuation Officer) v Birmingham Royal Institution for the Blind** [1967] 2 317, HL.
 - Blind persons' home—Whether for prevention of, or care in, illness, mental defectiveness, etc.—Whether welfare arrangements—Whether structure similar to those for such purposes—Rating and Valuation (Miscellaneous Provisions) Act 1955, s 9(1)—National Health Service Act 1946, ss 28(1), 79(1)—National Assistance Act 1948, s 29(1). **Jewish Blind Society Trustees v Henning (Valuation Officer)** [1961] 1 47, CA.
 - Garage for disabled person's vehicle—'Structure' which is 'of a kind similar to' those supplied by Minister of Health—'Supplied' otherwise—Brick-built garage annexed to house—Minister's garages temporary prefabricated structures—Garage owned by disabled person—Rating and Valuation (Miscellaneous Provisions) Act 1955, s 9(1). **Walker (Valuation Officer) v Wood** [1962] 3 188, CA.

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Structures supplied for use of invalids, disabled or handicapped persons (cont)—

Structure supplied for use of person in pursuance of arrangements for after-care of any person suffering from illness—

Structure of a kind similar to structures which could be provided by local authority or voluntary organisation—Flat acquired by disabled ratepayer—Ratepayer confined to wheelchair—Flat adapted for purpose of after-care—Ratepayer living in flat with wife—Whether flat a structure of a kind similar to one which local authority could supply for care or after-care of persons suffering from illness—General Rate Act 1967, s 45—Health Services and Public Health Act 1968, s 12(1). **Vandyk v Oliver (Valuation Officer)** [1976] 1 466, HL.

Structure supplied for use of person in pursuance of arrangements for handicapped persons—

Structure of a kind which could be provided by local authority—School for deaf children—Claim by owners of school for relief—Local education authorities having power to provide such schools under Education Acts—Whether local authority having power to provide school under statutory powers to make arrangements for handicapped—National Assistance Act 1948, s 29—General Rate Act 1967, s 45. **Trustees of the Royal Cross School for the Deaf v Morton (Valuation Officer)** [1975] 2 519, CA.

Unoccupied property—**Newly erected building—**

Completion—Completion notice—Appeal—Date of completion—Determination by court—Application—Evidence—Appeal not abandoned or dismissed—erection of building to be treated as having been completed on 'such date as the court shall determine'—Appeal against completion notice allowed—No application to fix a completion date made until after judgment delivered—No evidence as to likely date of completion—Whether court bound to fix completion date—General Rate Act 1967, Sch 1, para 8(5). **Ravenseft Properties v London Borough of Newham** [1976] 1 580, CA.

Completion—Liability to be rated from date of completion—Meaning of 'completion'—Building not capable of being occupied—Building lacking features necessary for occupation—Telephone exchange—Work by building contractor finished—Building lacking equipment including telephone equipment—Building not capable of being occupied as a telephone exchange—Whether building completed—General Rate Act 1967, Sch 1, para 8(1). **Post Office v Nottingham City Council** [1976] 2 831, CA.

Completion—Liability to be rated from date of completion—Meaning of 'completion'—Building not capable of being occupied—Building lacking features necessary for occupation and which when provided would have to be taken into account for valuation purposes—Office block—Main structure completed—No internal partitioning on any of storeys to be occupied as offices—Whether erection of storeys completed—Whether rating authority having power to serve completion notices—General Rate Act 1967, Sch 1, paras 7, 8(1)(5), 10. **Ravenseft Properties v London Borough of Newham** [1976] 1 580, CA.

Resolution for rating of unoccupied property—

Premises being modernised—Premises not only unoccupied but also incapable of occupation—Whether liable to rates—General Rate Act 1967, s 17(1), Sch 1. **Easiwork Homes Ltd v London Borough of Redbridge** [1970] 2 635, QBD.

Valuation—**Advertising station—**

Rights let out by agreement hereditament for rating purposes—Neon sign—Grant of rights of fixing and exhibiting a flashing neon advertising sign to be erected by grantee—Sign erected—Basis of valuation—Local Government Act 1948, s 56. **Imperial Tobacco Co (of Great Britain and Ireland) Ltd v Pierson (Valuation Officer)** [1960] 2 780, HL.

Agricultural dwelling-house—

Limitation of value by amount in respect of the dwelling-house which may be deducted from wages—Agricultural Wages (Regulation) Acts 1924–1940—Local Government Act 1929 s 72. **Bomford v South Worcestershire Assessment Committee** [1947] 1 299, CA.

Agriculture worker's cottage. See Agriculture (Rating—Valuation).**Airport fuel distribution depot—**

Rights appurtenant to hereditament—Additional rights of trading and access inseparable from installation—Rents basis—No deduction from rent for inseparable ancillary rights—Lease conferring right to supply fuel to aircraft over the airport—Bowser parking site—Rents covering manoeuvring area outside site. **Shell-Mex & BP Ltd v Langley (Valuation Officer)** [1962] 3 433, CA.

Burial ground—

Limitation on value of hereditament—Land acquired under the provisions of the Burial Act 1852—Crematorium—Whether entitled to limitation on value as burial ground—Burial Act 1852, s 26—Burial Act 1855, s 15—Cremation Act 1902, s 4. **Law (Valuation Officer) Wandsworth Borough Council** [1957] 3 71, CA.

Caravan camping site—

Evidence of value—Valuation by parties on profits basis and contractor's basis—Rejection of both methods by Lands Tribunal—Valuation on adjusted rent of site—Rejection of evidence erroneous—All classes of evidence admissible. **Garton v Hunter (Valuation Officer)** [1969] 1 451, CA.

Club—

Member's club—Factors not to be taken into account—Profits from sale of liquor—Absence of alternative accommodation—Monopoly of club facilities. **Aberdare Urban District Council v Pontypridd Area Assessment Committee** [1947] 2 877, KBD.

Deduction from gross value—

Rate, charge, or assessment made by commissioners of sewers 'or other like authority'—Sewerage rate levied by urban district council—Rating and Valuation Act 1925, s 22(1)(a). **Havant and Waterloo Urban District Council v Payne (Valuation Officer)** [1953] 2 831, CA.

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Offices—Profits basis—Whether valuation as part of undertaking or at full commercial value—Rating and Valuation Act 1925, s 22(1)—Local Government Act 1948, s 89(6). **Clayton (Valuation Officer) v British Transport Commission** [1955] 2 274, CA.

Power of Secretary of State to prescribe method of valuation—Validity of order prescribing method—Rateable value defined by order as percentage of 'relevant receipts' of undertaking—'Relevant receipts' including receipts originating outside rating area and receipts from leased property separately rated—Whether Secretary of State entitled to prescribe rateable value based on total receipts of undertaking—Whether order ultra vires—General Rate Act 1967, s 35—Docks and Harbours (Valuation) Order 1971 (SI 1971 No 561), arts 2(1), 3(2)—Docks and Harbours (Valuation)(Amendment) Order 1973 (SI 1973 No 654), art 4. **Milford Haven Conservancy Board v Inland Revenue Comrs** [1976] 3 263, CA.

Dock undertaking—

Profits basis—Nil assessment—Loss on dock undertaking—Part of British Transport Commission's undertaking—No obligation to adjust charges to cover costs—Stock and loan interest excluded from dock accounts—Whether departure from profits basis justified. **British Transport Commission v Hingley (Valuation Officer)** [1961] 1 837, CA.

Dwelling-house—

Disrepair—Landlord's liability to repair—Dwelling-house in poor state of repair—Disrepair disregarded in arriving at value—Valuation for Rating Act 1953, s 2(2)(3)(a). **Wexler v Playle (Valuation Officer)** [1960] 1 338, CA.

Letting of rooms singly for residential purposes—Premises where substantially the whole of available accommodation was so let excluded—Four rooms used by occupier, seven let—Whether four rooms part of available accommodation—Valuation for Rating Act 1953, s 3(2). **Walls v Peak (Valuation Officer)** [1960] 2 81, CA.

Method of valuation—Interest on purchase price, etc—Valuation for Rating Act 1953, s 2(2). **Sole v Henning (Valuation Officer)** [1959] 3 398, CA.

Electricity undertaking—

Profits basis—Calculation of profits—Deduction of excess profits tax. **Yeovil Rural District Council v South Somerset and District Electricity Co Ltd** [1947] 1 669, CA.

Profits basis—Limiting profits basis to accounts for year preceding date of assessment—Whether 'special circumstances' rendering profits basis inapplicable—Rating and Valuation Act 1925, s 31(5). **Barking Borough Rating Authority v Central Electricity Board** [1940] 3 477, CA.

Special classes of property—Ring main—Apportionment of annual value between areas where tapped and not tapped. **Metropolitan Electric Supply Co Ltd v Buckingham County Valuation Committee** [1939] 1 36, KBD.

Foreshore, esplanade and gardens—

Profits basis yielding low value—Finding that occupying local authority would give higher rent. **Morecambe and Heysham Corpn v Robinson (Valuation Officer)** [1961] 1 721, CA.

Gas company—

Computation on profits basis—Capital sum required for conduct of undertaking—Source from which, and price at which, capital obtainable irrelevant. **Croydon Gas Co v Rating Authority for the County Borough of Croydon** [1946] 1 384, KBD.

Hypothetical tenancy—

Impending redevelopment—Part of factory required for road widening—Expectation of demolition in a year—Effect on value taken into account—Rating and Valuation Act 1925, s 22(1)(b). **Dawkins (Valuation Officer) v Ash Brothers & Heaton Ltd** [1969] 2 246, HL.

Land—

New South Wales. *See* **New South Wales (Rates—Valuation—Land)**.

Licensed premises—

Monopoly value—Capital value—Rent the hypothetical tenant would pay—Licensing (Consolidation) Act 1910, s 14(2). **Appenrodt v Central Middlesex Assessment Committee** [1937] 2 325, CA.

Profits basis—Direct method of assessing gross value—Notice calling for particulars of trade actually done during each of past three years—Whether such particulars 'reasonably required' by valuation officer—Local Government Act 1948, s 58(1)(2) (as amended)—Rating and Valuation Act 1925, s 68. **Watney Mann Ltd v Langley** [1963] 3 967, QBD.

Tied house. **Robinson Bros (Brewers) Ltd v Houghton and Chester-le-Street Assessment Committee** [1938] 2 79, HL.

Market—

Tolls—Rateability—Franchise tolls for admission to market—Distinction from stallage and pittance, tolls for particular use of soil—Cattle tolls—Charge for all cattle entering market—Franchise tolls not taken into consideration in ascertaining rateable value. **Oswestry Corpn v Hudd (Valuation Officer)** [1966] 1 490, CA.

Non-industrial building—

Gross value—Chain and anchor testing house—Hereditament was a factory—Whether used wholly or mainly for 'industrial purposes'—Rating and Valuation Act 1925, s 22(1)(a)(b)(4)—Rating and Valuation (Miscellaneous Provisions) Act 1955, s 5(1)(2)(3). **Crowe (Valuation Officer) v Lloyds British Testing Co Ltd** [1960] 1 411, CA.

Plant and machinery—

Dry dock—Hereditament containing dry dock—Exclusion of plant from valuation of hereditament—Plant used in connection with dry dock—Dock as a functional entity—Dock consisting of excavated cavity and associated installations—Installations constituting plant—Whether dock as a whole to be regarded as plant—Whether walls and floor of dock to be regarded separately as forming part of hereditament—General Rate Act 1967, s 21(1). **Manchester Marine Ltd v Duckworth (Valuation Officer)** [1973] 3 838, CA.

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Uniformity—

County valuation committee—Right to proceed by instalments. **R v Cornwall County Valuation Committee, ex parte Falmouth Borough Council** [1937] 2 266, CA.

Valuation by reference to rents—

Flats—Provision of service and amenities by landlord—Ascertainment of gross rateable value—Valuation (Metropolis) Act 1869, s 4. **Bell Property Trust Ltd v Hampstead Borough Assessment Committee** [1940] 3 640, CA.

Water undertaking—

Gross receipts—Revenue from precepts on board's constituent authorities—Precepts to meet cost of uncompleted works. **Mid-Northamptonshire Water Board v Lee (Valuation Officer)** [1957] 2 143, HL.

Profits basis—Gross receipts—Revenue from precepts on board's constituent authorities—Precepts to meet cost of uncompleted works. **Mid-Northamptonshire Water Board v Lee (Valuation Officer)** [1957] 2 143, HL.

Profits basis—Indirectly productive hereditament—Water intake—Departure from usual method of calculation on profits basis—Special circumstances—Altitude of hereditament—Rating and Valuation Act 1925, s 22(1)(b). **Metropolitan Water Board v Hertford Corp'n** [1953] 1 1047, CA.

Wireless relay service—

Valuation on profits basis. **Amalgamated Relays Ltd v Burnley Rating Authority** [1950] 1 253, KBD.

Zoological gardens—

Valuation on profits basis—Exceptional hereditament—Factors to be considered—Receipts from employment of tenant's capital—Gains from hiring out animals—Profits tax. **Surrey County Valuation Committee v Chessington Zoo Ltd** [1950] 1 154, KBD.

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Amendment by assessment committee of its own motion—Union Assessment Committee Act 1862, s 26—Rating and Valuation Act 1925, s 30. **R v West Middlesex Assessment Committee, ex parte Southall Rating Authority** [1942] 2 280, KBD.

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Inclusive remuneration—Claim by rating authority to all documents prepared by valuers in course of work—Right of valuers to retain documents—Rating and Valuation Act 1925, s 38. **Leicestershire County Council v Michael Faraday & Partners Ltd** [1941] 2 483, CA.

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Charge of supplying unregistered customer with rationed food—

Further charge of supplying rationed food without coupon—Whether two offences committed—Charge of supplying two different rationed foods—Whether information bad for duplicity—Rationing Order 1939 (S R & O 1939 No 1856), arts 2, 7(a), (c). **Kite v Brown** [1940] 4 293, KBD.

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Meat priced and marked with customer's name but not delivered to customer—Whether offer within meaning of the order—Rationing Order 1939 (S R & O 1939 No 1856), art 2—Meat (Maximum Retail Prices) Order 1940 (S R & O 1940 No 37), art 4. **Wiles v Maddison** [1943] 1 315, KBD.

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False statement—Application by employee for allocation of petrol—Untrue statements—Letter by employers certifying accuracy of information furnished—Untrue statements not within knowledge of employers—Whether 'knows' to be interpreted as 'ought to have known'—Defence (General) Regulations 1939, reg 82(2). **London Computator Ltd v Seymour** [1944] 2 11, KBD.

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Express term of contract as to number of working hours—Consensual variation of term—Variation implied by conduct—Contracts of Employment Act 1963, Sch 2, para 1(1)(2). **Armstrong Whitworth Rolls Ltd v Mustard** [1971] 1 598, QBD.

Normal working hours—Overtime—Statement of terms of employment referred normal working hours to works rules—Works rules stated normal working hours to be forty hour week—Overtime worked—Whether overtime obligatory under national agreements—Whether overtime working to be taken into account in assessing redundancy payment—Redundancy Payments Act 1965, s 1, Sch 1, para 5—Contracts of Employment Act 1963, Sch 2, paras 1(1), 3(1). **Pearson v William Jones Ltd** [1967] 2 1062, QBD.

Overtime—Employee entitled to overtime pay—Contract fixing minimum number of working hours—Minimum number of working hours exceeding number of working hours without overtime—Contract guaranteeing employment for 40 hours a week at basic hourly rate—Contract obliging employee to work overtime when required by employer—Employer not obliged to provide overtime work—Employee regularly working 57 hour week—Whether contract 'fixing' minimum number of working hours in excess of number of hours without overtime—Whether normal working hours 57 hours a week—Contracts of Employment Act 1963, Sch 2, para 1(1)(2). **Tarmac Roadstone Holdings Ltd v Peacock** [1973] 2 485, CA.

REDUNDANCY (cont)

Dismissal by reason of redundancy—

Cessation of or diminution in requirements of business for employees to carry out work of a particular kind—

Dismissal attributable to diminution—Woodworker engaged in boatbuilding—Change from wood to fibreglass—Employee found uneconomic after study of costs—Employee not replaced—Redundancy Payments Act 1965, s 1(2)(b), 9(2)(b). *Hindle v Percival Boats Ltd* [1969] 1 836, CA.

Place where person employed—Steel erector Steel erector employed in construction industry—Refusal of employee to work away from home—Dismissal—Whether implied term in contract of employment relating to place of work—Travelling an essential feature of employment in the industry. *Stevenson v Tees-Side Bridge and Engineering Ltd* [1971] 1 296, QBD.

Test to be applied—Whether account to be taken of terms and conditions of employment of employee claiming redundancy payment—Employees brought to work from long distance at employers' expense—Provision of transport ceasing to be economic—Employers withdrawing transport—Employees dismissed by reason of employers' repudiation of contract—Employees engaging other men living nearby in place of dismissed employees—Whether employees dismissed by reason of redundancy—Redundancy Payments Act 1965, s 1(2)(b). *Chapman v Goonvean & Rostowrack China Clay Co Ltd* [1973] 2 1063, CA.

Work of a particular kind—Employee engaged to do clerical work from 9.30 am to 5.30 pm five days a week—Employer altering employee's days and hours of work—Employee's total number of working hours unaltered—Employee's actual work unchanged—Employee dismissed for refusing to accept alteration in hours of work—Employee replaced by person willing to work the new hours—Whether change of hours act constituting change in 'kind of work' required—Whether employee entitled to redundancy payment—Redundancy Payments Act 1965, s 1(2)(b). *Johnson v Nottinghamshire Combined Policy Authority* [1974] 1 1082, CA.

Work of a particular kind—Fitter operating garage's emergency breakdown service—Fitter occupying flat rent-free in part of business premises connected with another side of employers' business—Sale by employers of that side of the business and of premises which contained flat—Notice given to fitter to terminate employment and vacate flat—Subsequent offer by employers of reemployment as fitter refused—Emergency breakdown service discontinued—Whether fitter entitled to redundancy payment—Redundancy Payments Act 1965, s 1(2). *Arnold v Thomas Harrington Ltd* [1967] 2 866, QBD.

Change of ownership of business—

Business unchanged but employee's duties altered—Garage taken over by new company with different business methods—Re-organisation transferring rather different work to manager—Manager unable to adapt himself to new duties—Overall requirements of business unchanged—Manager dismissed and replaced by new manager—Whether old manager dismissed on account of redundancy and entitled to redundancy payment—Redundancy Payments Act 1965, s 1(2)(b). *North Riding Garages Ltd v Butterwick* [1967] 1 644, QBD.

No dismissal if new owner renews employee's contract or re-engages him—Owner farmer sold farm by public auction, and subsequently, by another public auction the live and dead stock—Incoming farmer bought only part of live and dead stock—Employee farm worker was re-employed by new owner without any break in employment and continued in similar work—Whether 'change of ownership of business'—Whether employee entitled to redundancy payment from vendor farmer—Redundancy Payments Act 1965, s 13(1)(a). *Lloyd v Brassey* [1969] 1 382, CA.

No dismissal if new owner renews employee's contract or re-engages him—Re-engagement—Offer in writing—Requirements of valid offer—Sale of part of business by vendor employers and re-engagement by purchasing employers—Circular letter not showing material differences between old and new terms of employment—Different terms as to notice overtime wages and insurance scheme—Position as if re-engagement on new contract by vendor employers—Whether re-engagement was in pursuance of an offer in writing within Redundancy Payments Act 1965, ss 3(2)(b) 13(2). *Havenhand v Thomas Black Ltd* [1968] 2 1037, QBD.

No dismissal if new owner renews employee's contract or re-engages him—Re-engagement—Sale of business by former employer—Condition that purchasers of business make written offer of re-engagement to all employees in business on same terms as in existing contracts—No written offer made—Employee working for purchasers for two weeks for same wages paid by former employer—Employee's wages then changed by purchasers—Employee subsequently dismissed by purchasers—Whether conduct of purchasers and employee amounting to offer and acceptance of re-engagement on terms not differing from previous contract—Whether employee entitled to redundancy payment from former employer—Redundancy Payments Act 1965, ss 3(2)(a), 13(2). *Ubsdell v Paterson* [1973] 1 685, NIRC.

Dismissal—

Employer's offer of employment at reduced wages and inferior status—Employee commenced work at reduced wages and subsequently left employment for other work—Whether employee 'dismissed' or whether consensual variation of original contract—Whether employee entitled to redundancy payment—Redundancy Payments Act 1965, s 3(1)(a)(2)(b). *Marriott v Oxford and District Co-operative Society Ltd* [1969] 1 471, QBD.

Notice to employee to terminate contract of employment—Employee verbally requesting termination of contract on date prior to expiry of notice—Employers agreeing to request—Employee leaving before expiry date—Whether employee 'dismissed' or whether consensual termination of contract—Redundancy Payments Act 1965, s 4(1), (2). *McAlwane v Boughton Estates Ltd* [1973] 2 299, NIRC.

REDUNDANCY (cont)

Dismissal by reason of redundancy (cont)—

Dismissal (cont)—

Termination of contract of employment by employer—Repudiation of contract by employer—Circumstances in which employee will be taken to have accepted repudiation—Employee informed that work being transferred to new premises—Employee not indicating whether prepared to work at new premises—Employee directed to work at new premises—No renewal of contract or offer of new contract by employer—Employee working at new premises for short time and then giving week's notice—Whether employee having accepted employer's repudiation of contract—Whether contract terminated by employer alone or by mutual agreement between employer and employee. **Shields Furniture Ltd v Goff** [1973] 2 653, NIRC.

Termination of contract of employment by employer—Repudiation of contract by employer—Acceptance of repudiation by employee—Contract to employ at particular premises—Employee warned by employers that business was to be transferred to new premises—Employers insisting on right to require employee to work at new premises—Employee giving notice terminating contract before date of move fixed—Employee claiming redundancy payment from employers—Whether employee's contract repudiated by employers—Whether contract terminated by employers—Redundancy Payments Act 1965, s 3(1)(a). **Maher v Fram Gerrard Ltd** [1974] 1 449, NIRC.

Employers' intention to cease to carry on business in place where employee employed—

Place where employee employed—Notice that there would be no further work in Sussex and offer of employment in other areas—Whether dismissal by reason of redundancy—Redundancy Payments Act 1965, ss 1(2), 3(1). **R H McCulloch Ltd v Moore** [1967] 2 290, QBD.

No dismissal on renewal of contract or re-engagement—

Offer of alternative employment—Employer's offer of employment at reduced wages and inferior status—Employee commenced work at reduced wages and subsequently left employment for other work—Whether consensual variation of contract—Redundancy Payments Act 1965, s 3(1)(a). **Marriott v Oxford and District Co-operative Society Ltd** [1969] 3 1126, CA.

Presumption that dismissal by reason of redundancy—

Employee absent from work because of sickness for period of 18 months—Practice of employers to take back employees after period of absence through sickness—Employee not entitled to sick pay during absence—Employers closing down works—Employers giving employee notice to terminate contract—Whether dismissal by reason of redundancy—Redundancy Payments Act 1965, s 9(2). **Marshall v Harland Wolff Ltd** [1972] 2 715, NIRC.

Exclusion from right to redundancy payment—

Change of ownership of business—

Unreasonable refusal of offer by new owner to renew contract of employment or re-engage employee—Meaning of 'change of ownership'—Tenant farmer terminating tenancy on retiring—Employee farm worker dismissed on termination of tenancy—Offered re-employment by in-coming tenant farmer refused it—No transfer of ownership of business—Employee dismissed on account of redundancy—Redundancy Payments Act 1965, s 13(1)(3)(4). **Bandey v Penn** [1968] 1 1187, QBD.

Exclusion by agreement—

Agreement by person employed under contract for fixed term of two years or more—Meaning of 'fixed term'—Contract for a definite term—Contract terminable before expiry of term by notice on either side—Whether a contract for a 'fixed term'—Redundancy Payments Act 1965, s 15(2). **British Broadcasting Corporation v Ioannou** [1975] 2 999, CA.

Refusal of offer of re-engagement. *See* Unreasonable refusal of offer of re-engagement, *post*.

Local government officer—

Compensation. *See* Local government (Officer—Compensation for loss of employment).

Payment—

Calculation of amount. *See* Calculation of amount of payment, *ante*.

Rebate to employer—

Entitlement—Liability of employer to make payment—Claim for payment submitted to employer out of time—Waiver by employer of possible statutory objection—Effect of waiver—Effect on rights of Secretary of State as trustee of the Redundancy Fund—Effect on right of employee to claim payment—Whether employer liable to make payment—Whether employer entitled to rebate—Redundancy Payments Act 1965, ss 21, 30(1)(a). **Secretary of State for Employment The v Atkins Auto Laundries Ltd** [1972] 1 9, NIRC.

Proceedings by Secretary of State to recover rebate—Proper mode of proceedings—Proceedings on ground employees not entitled to redundancy payment—Jurisdiction of industrial tribunal to determine question as to right of an employee to redundancy payment—Application by Secretary of State to tribunal for declaration that employees not dismissed by reason of redundancy—Jurisdiction of tribunal to entertain application—Whether application necessary before action in High Court for recovery of rebates as money paid under a mistake of fact—Whether High Court having jurisdiction to determine whether dismissals by reason of redundancy in action for recovery of rebates—Redundancy Payments Act 1965, s 9(1). **Secretary of State for Employment v Wellworthy Ltd** [1973] 3 488, NIRC.

Period of continuous employment. *See* Employment (Continuity).

Reference of questions to tribunal—

Appeal against determination of tribunal—

Right of appeal on point of law—Point of law—Meaning—Whether question whether term to be implied in contract of employment point of law. **O'Brien v Associated Fire Alarms Ltd** [1969] 1 93, CA.

REDUNDANCY (cont)

Right to redundancy payment by reason of lay-off or short-time—

Exclusion of right—

Reasonable expectation that within four weeks employee would enter on a period of employment of not less than 13 weeks—Period of employment—Meaning—Skilled employee laid off—Offer of inferior work by employer—Offer not accepted—Whether words 'period of employment' referring only to employment under existing contract of employment—Whether employee's right to redundancy payment excluded—Redundancy Payments Act 1965, s 6(4). **Neepsend Steel & Tool Corp Ltd v Vaughan** [1972] 3 725, NIRC.

Unfair dismissal—

Claim for redundancy payment. *See Unfair dismissal* (Compensation—Redundancy payment).

Compensation—

Loss of accrued right to redundancy payment. *See Unfair dismissal* (Compensation—Loss of accrued right to redundancy payment).

Doubt as to which claim appropriate. *See Industrial relations* (Practice—Claim for redundancy payment or compensation for unfair dismissal).

Unreasonable refusal of offer of re-engagement—

Offer in writing—

Omission of term of offer from written offer—Effect—Whether omission invalidating offer—Redundancy Payments Act 1965, s 2(4). **Kaye v Cooke's (Finsbury) Ltd** [1973] 3 434, NIRC.

Requirements of valid offer—Date of commencement of new employment—Need to specify date—Employers moving to new premises—Letter from employers to employees offering re-engagement at new premises on same terms and conditions as those currently in force—Letter not specifying precise date when new employment to start—New employment starting immediately after termination of existing employment—Whether necessary that offer should specify date—Redundancy Payments Act 1965, s 2(4). **Kaye v Cooke's (Finsbury) Ltd** [1973] 3 434, NIRC.

Requirements of valid offer—Offer in writing—Requirements of valid offer—Notice posted on notice board addressed to all employees—Whether constituting an offer in writing—Redundancy Payments Act 1965, s 2(4). **McCreadie v Thomson & MacIntyre (Patternmakers) Ltd** [1971] 2 1135, HL.

Specification of differences compared with previous contract—Whether necessary to specify points of similarity—Redundancy Payments Act 1965, s 2(4). **McCreadie v Thomson & MacIntyre (Patternmakers) Ltd** [1971] 2 1135, HL.

Specification of differences compared with previous contract—Whether offer must conform to requirements of s 2(4)—Redundancy Payments Act 1965, s 2(4), s 3(2)(b). **Marriott v Oxford and District Co-operative Society Ltd** [1969] 3 1126, CA.

Offer of suitable employment—

Headmaster offered job in mobile pool of teachers—Same salary guaranteed—Necessity of moving house—Suitability of alternative offer of employment matter of degree and fact for Industrial Tribunal—Reasonableness of refusal of offer—'Suitable employment'—Redundancy Payments Act 1965, s 2(4). **Taylor v Kent County Council** [1969] 2 1080, QBD.

Reasonableness of refusal—

Offer of regular employment—Refusal on grounds that in employee's view alternative employment would not last more than limited period—Whether likely duration of alternative employment relevant in determining whether refusal unreasonable—Redundancy Payments Act 1965, s 2(4). **Morganite Crucible Co Ltd v Street** [1972] 2 411, NIRC.

RE-ENTRY

Right of re-entry—

Generally. *See Landlord and tenant* (Right of re-entry).

Right not registered as land charge—

Whether void against successor in title to purchaser for want of registration. *See Land charge* (Estate contract—Option to purchase right of pre-emption or other like right—Right of re-entry).

REFERENCE

Criminal appeal—

Reference by Home Secretary. *See Criminal law* (Appeal—Reference by Home Secretary).

European Court. *See European Economic Community* (Reference to European Court).

Federal Supreme Court, Nigeria. *See Nigeria* (Reference—Interpretation of Constitution—Interpretation referred to Federal Supreme Court).

Point of law—

Reference following acquittal of accused. *See Criminal law* (Appeal—Reference of point of law following acquittal of accused).

Referee—

Practice. *See Practice* (Reference to referee).

REFERENTIAL TRUSTS

Will. *See Will* (Referential trusts).

RE-FINANCING

See Hire-purchase (Refinancing arrangements).

REFRESHING MEMORY

Witness in criminal proceedings. *See Criminal evidence* (Witness—Refreshing memory).

REFRESHMENT

Innkeeper—

Duty to provide. *See Inn* (Duty to supply refreshment and lodging to traveller).

REFRESHMENT HOUSE

- Late night refreshment house—
Licence. *See* **Licensing** (Late night refreshment house).

REFUGE HOLES

- Coal mine—
Statutory duty to provide. *See* **Coal mining** (Statutory duty—Provision of refuge holes).

REFUGEE

- Immunity from expulsion—
Immunity by virtue of international convention. *See* **Lesotho** (Refugee—Expulsion—Refugee claiming immunity by virtue of international convention).

REFUSE

- Accumulation or deposit—
Statutory nuisance. *See* **Nuisance** (Statutory nuisance—Accumulation or deposit prejudicial to health or a nuisance).
- Generally. *See* **Public health** (Refuse).

REGIMENTAL RECORD

- Admissibility in evidence. *See* **Document** (Admissibility in evidence—Records as evidence of facts stated therein—Regimental record).

REGISTER

- Companies—
Restoration of name of company to register. *See* **Company** (Restoration to register).
- Proprietorship register—
Entry of purchase price—
Whether evidence of receipt of purchase price. *See* **Land registration** (Transfer—Purchase price remaining unpaid—Deed of transfer containing acknowledgement of receipt of purchase price).
- Share register. *See* **Company** (Shares—Register).

REGISTERED LAND

- Compulsory purchase—
Costs—
Promoter's liability. *See* **Compulsory purchase** (Costs—Promoter's liability—Registered land).
- Generally. *See* **Land registration**.

REGISTERED OFFICE

- Company—
Service—
Writ. *See* **Writ** (Service on company—Registered office).
- Moneylender. *See* **Moneylender** (Licence—Address).

REGISTERED POST

- Service by registered post—
Generally. *See* **Practice** (Service by post—Registered post).
- Motoring offences—
Notice of intended prosecution. *See* **Road traffic** (Notice of intended prosecution—Notice sent to defendant's residence by registered post).

REGISTERED TRADE UNION

- Dissolution. *See* **Trade union** (Dissolution—Registered trade union).

REGISTRAR

- Additional superintendent registrar of births, deaths and marriages—
Corruption—
Whether a 'person serving under the Crown'. *See* **Criminal law** (Corruption—Transactions with agents—Agent—Person serving under the Crown—Additional superintendent registrar of births, deaths and marriages).
- Chief Registrar of Friendly Societies—
Powers of control in relation to building societies. *See* **Building society** (Chief Registrar—Controls exercisable by Chief Registrar).
- Criminal appeals—
Registrar of criminal appeals—
Disposal of groundless appeals. *See* **Criminal law** (Court of Appeal—Disposal of groundless appeal—Powers of Registrar of Criminal Appeals).
- Grant of administration. *See* **Administration of estates** (Grant of administration—Jurisdiction—Registrar).
- Land registrar—
Appeal—
Procedure. *See* **Land registration** (Appeal—Procedure).
- Powers—
Application under s 17 of the Married Women's Property Act 1882. *See* **Husband and wife** (Property—Summary proceedings—Application—Procedure by originating summons—Absence of respondent—Powers of registrar).
- Reference to referee. *See* **Practice** (Reference to referee—Order by registrar—Jurisdiction of registrar).
- Variation of settlement—
Application for variation. *See* **Variation of settlement** (Application for variation—Practice—Made to registrar on affidavit).

REGISTRATION

- Accommodation. *See* **Housing** (Registration of living accommodation).

REGISTRATION (cont)

- Agreement—
 - Restrictions on trade. *See* **Restrictive trade practices** (Registration of agreement).
- Articles of clerkship. *See* **Solicitor** (Articled clerk).
- Certificate—
 - Building work for. *See* **Building control** (Certificate of registration).
- Charge—
 - Charge created by company. *See* **Company** (Charge—Registration).
- Priority—
 - Company debenture. *See* **Company** (Debenture—Priority—Competing charges—Order and registration).
- Charity. *See* **Charity** (Registration).
- Club—
 - Application for registration certificate. *See* **Licensing** (Club—Application for registration certificate).
 - Registration for purpose of having gaming machines. *See* **Gaming** (Club—Registration).
- Common land and rights of common. *See* **Commons** (Registration).
- Company—
 - Restoration of name to register. *See* **Company** (Restoration to register).
- Conditions imposed by building licence. *See* **Housing** (Registration of conditions imposed by building licence).
- Design. *See* **Design** (Registration).
- Estate contract—
 - Vacation of entry in register. *See* **Land charge** (Vacation of entry in register).
- Film title. *See* **Cinema** (Film—Title—Registration).
- Foreign judgment. *See* **Conflict of laws** (Foreign judgment—Registration in England).
- Heavy motor car. *See* **Road traffic** (Heavy motor car—Registration).
- Indian and Pakistani residents—
 - Ceylon. *See* **Ceylon** (Registration of Indian and Pakistani residents).
- Land—
 - Land charge. *See* **Land charge**.
 - Generally. *See* **Land registration**.
- Living accommodation. *See* **Housing** (Registration of living accommodation).
- Mentally disordered persons—
 - Homes for. *See* **Mental health** (Registration of residential homes for mentally disordered persons).
- Minute of reduction of share capital of company—
 - Form of minute for registration. *See* **Company** (Reduction of capital—Minute of reduction—Form of minute).
- Pending action. *See* **Land charge** (Pending action).
- Premises—
 - Place of meeting for religious worship. *See* **Ecclesiastical law** (Place of meeting for religious worship—Registration of premises).
- Proprietary club—
 - Registration for purposes for having gaming machines. *See* **Gaming** (Club—Registration—Registration for purpose of having gaming machines—Refusal to register or renew registration—Proprietary club).
- Restrictive trading agreement. *See* **Restrictive trade practices** (Registration of agreement).
- Selective employment tax. *See* **Selective employment tax** (Registration).
- Trade mark—
 - Generally. *See* **Trade mark** (Registration).
 - Opposition to registration. *See* **Trade Mark** (Opposition to registration).
- Value added tax. *See* **Value added tax** (Registration).

REGULATED TENANCY

- Rent. *See* **Rent restriction** (Regulated tenancy).

REHABILITATION

- Houses—
 - Unfit for human habitation. *See* **Housing** (Clearance area—Rehabilitation of unfit houses).
- Rehabilitation of offenders—
 - Previous convictions—
 - Reference at trial. *See* **Criminal law** (Trial—Previous convictions—Rehabilitation of offenders).

REHEARING

- Divorce Division. *See* **Divorce** (Rehearing).
- Evidence—
 - Answers to cross-examination on affidavits at first hearing—
 - Admissibility. *See* **Evidence** (Rehearing—Answers to cross-examination on affidavits at first hearing).

REINSTATEMENT

- Covenant—
 - Lease—
 - Reinstatement of premises at end of term. *See* **Landlord and tenant** (Covenant—Reinstatement of premises at end of term).
- Insurance—
 - Fire insurance. *See* **Insurance** (Fire insurance—Reinstatement).

RELATOR ACTION

- Injunction—
 - Public right. *See* **Injunction** (Public right—Relator action).
- Generally. *See* **Attorney-General** (Relator action).

RELEASE

- Debt—
 - Income tax—
 - Deduction in computing profits. *See* **Income tax** (Deduction in computing profits—Debt—Subsequent release).
- Vessel under arrest. *See* **Admiralty** (Arrest of vessel—Release).

RELIEF

- Forfeiture—
 - Lease. *See* **Landlord and tenant** (Relief against forfeiture).
- Income tax—
 - Special contribution. *See* **Special contribution** (Relief).
- Injunction. *See* **Injunction**.
- Rates. *See* **Rates** (Relief).
- See* **Rates** (Relief).
- Value added tax. *See* **Value added tax** (Relief).

RELIGION

- Adoption—
 - Relevant consideration. *See* **Adoption** (Order—Application for adoption order—Considerations to be regarded—Religion).
- Charitable purpose. *See* **Charity** (Religion).
- Fugitive offender—
 - Extradition—
 - Possibility, if returned, of punishment by reason of religion. *See* **Extradition** (Fugitive offender—Restrictions on return—Punishment by reason of race, religion, nationality or political opinions).
- Ward of court—
 - Care and control—
 - Factors to be considered. *See* **Ward of court** (Care and control—Factors to be considered—Religion).
- Will—
 - Condition. *See* **Will** (Condition—Religion).

RELIGIOUS EDUCATION

- Child. *See* **Minor** (Custody—Care and control—Religious education).

RELIGIOUS WORSHIP

- Place of meeting for—
 - Registration. *See* **Ecclesiastical law** (Place of meeting for religious worship—Registration of premises).

REMAINDER

- Will—
 - Vesting—
 - Bequest of residue and remainder. *See* **Will** (Gift—Vesting—Bequest of residue and remainder).

REMARRIAGE

- Divorced person—
 - Capacity to remarry immediately after decree absolute. *See* **Divorce** (Decree absolute—Remarriage—Capacity of divorced person to remarry immediately after grant of decree absolute).

REMOTENESS OF DAMAGE

- Negligence. *See* **Negligence** (Remoteness of damage).
- Generally. *See* **Damages** (Remoteness of damage).

REMOVAL

- Removal of articles from public building. *See* **Criminal law** (Removal of articles from public building).
- Ship under arrest. *See* **Admiralty** (Practice—Action in rem—Ship under arrest—Removal of ship to safe berth in another place).

REMUNERATION

- Administrator—
 - Power of court to authorise. *See* **Executor and administrator** (Administrator—Power of court to authorise remuneration).
- Consultant—
 - National Health Service. *See* **National Health Service** (Consultant—Remuneration).
- Income tax—
 - Office or employment. *See* **Income tax** (Emoluments from office or employment).
- Local government officer. *See* **Local government** (Officer—Remuneration).
- Medical practitioner—
 - Failure to comply with terms of service. *See* **National Health Service** (Medical practitioner—Failure to comply with terms of service).
- Payment in current coin. *See* **Master and servant** (Remuneration—Artificer—Payment otherwise than in current coin of realm).
- Solicitor—
 - Contingency fee. *See* **Solicitor** (Costs—Contingency fee).
 - Generally. *See* **Solicitor** (Remuneration).
 - Non-contentious business—
 - Taxation of costs. *See* **Costs** (Taxation—Solicitor—Non-contentious business).
- Teacher. *See* **Education** (Teacher—Remuneration).
- Trustee. *See* **Trust and trustee** (Remuneration of trustee).

RENEWAL

Lease—

Covenant. *See* **Landlord and tenant** (Covenant—Renewal of lease).Option to renew. *See* **Landlord and tenant** (Renewal of lease—Option).

Option—

Building lease. *See* **Landlord and tenant** (Building lease—Renewal—Option).Lease. *See* **Landlord and tenant** (Renewal of lease—Option).

Writ—

Admiralty action in personam. *See* **Admiralty** (Practice—Action in personam—Writ—Renewal).Admiralty action in rem. *See* **Admiralty** (Practice—Action in rem—Writ—Renewal).Principles on which renewal granted. *See* **Writ** (Extension of validity—Jurisdiction—Principles on which renewal granted).**RENT**

Acceptance by landlord—

Waiver of forfeiture. *See* **Landlord and tenant** (Forfeiture of lease—Waiver of forfeiture—Acceptance of rent).Waiver of notice to quit. *See* **Landlord and tenant** (Notice to quit—Waiver—Acceptance of rent in respect of period after termination of tenancy).

Administration of estates—

Capital or income. *See* **Administration of estates** (Capital or income—Rent).

Agricultural holding—

Arbitration on terms of tenancies as to rent. *See* **Agricultural holding** (Arbitration—Rent).

Arrears—

Forfeiture of lease—

Generally. *See* **Landlord and tenant** (Forfeiture of lease—Arrears of rent).Relief. *See* **Landlord and tenant** (Relief against forfeiture—Arrears of rent).

Best rent—

Lease granted by mortgagor. *See* **Mortgage** (Power of leasing—Rent).

Book—

Failure to provide—

Whether rent recoverable by action. *See* **Landlord and tenant** (Rent—Agreement for increase—Rent book required by law not supplied by landlord—Whether rent recoverable by action).

Business premises—

Interim rent. *See* **Landlord and tenant** (Rent—Business premises—Interim rent).

Limitation—

Counter-inflation legislation. *See* **Landlord and tenant** (Rent—Business premises—Limitation—Prohibition on increase in rate of rent—Counter-inflation legislation).New tenancy. *See* **Landlord and tenant** (Business premises—Application for new tenancy).Coal mining lease, under. *See* **Coal mining** (Mining lease—Rent).

Company—

Winding-up—

Liability for rent. *See* **Company** (Winding-up—Proof and ranking of claims—Rent).Corn rent. *See* **Corn rents**.Covenant to pay on gold basis. *See* **Landlord and tenant** (Rent—Covenant to pay on gold basis).

Covenant to pay rent—

Assignment of benefit of covenant. *See* **Landlord and tenant** (Assignment of lease—Obligation to pay rent—Assignee—Express covenant with assignor to pay rent—Assignment of benefit of covenant).

Deduction of tax—

Failure to deduct. *See* **Income tax** (Annual payment—Deduction of tax—Failure to deduct—Rent on long lease).

Deficiency—

Income tax—

Deduction in computing profits. *See* **Income tax** (Deduction in computing profits—Deficiency in rent).

Demand—

Waiver of forfeiture. *See* **Landlord and tenant** (Forfeiture of lease—Waiver of forfeiture—Demand for rent).Distress. *See* **Distress**.

Excess rent—

Income tax. *See* **Income tax** (Profits—Excess rent).

Fair rent—

Determination of. *See* **Rent restriction** (Rent—Determination of fair rent).Generally. *See* **Rent restriction** (Fair rent).

Fixing—

Lease—

Option to renew. *See* **Landlord and tenant** (Lease—Option to renew—Fixing of rent).

Furnished premises—

Rent restriction. *See* **Rent restriction** (Furnished letting).

House constructed under building licence—

Permitted rent. *See* **Housing** (House constructed under building licence—Permitted rent).

Income tax—

Damages in lieu of rent. *See* **Income tax** (Capital or income receipts—Damages—Loss of profit in respect of property—Damages awarded to landlord against tenant unlawfully remaining in occupation of property).Deduction in computing profits. *See* **Income tax** (Deduction in computing profits—Expenses wholly and exclusively laid out for purposes of trade—Rent).Excess rent. *See* **Income tax** (Profits—Excess rent).

RENT (cont)**Increase—****Agreement for increase—**

Failure to provide rent book—Whether rent recoverable by action. *See* **Landlord and tenant** (Rent—Agreement for increase—Rent book required by law not supplied by landlord—Whether rent recoverable by action).

Regulated tenancy. *See* **Rent restriction** (Regulated tenancy—Increase of rent).

Interim rent—

Business premises. *See* **Landlord and tenant** (Rent—Business premises—Interim rent).

Joint tenancy. *See* **Landlord and tenant** (Rent—Joint tenancy).

Limitation. *See* **Landlord and tenant** (Rent—Limitation).

Local authority housing. *See* **Housing** (Local authority houses—Rent).

Low—**Tenancy at low rent—**

Leasehold enfranchisement. *See* **Landlord and tenant** (Leasehold enfranchisement—Tenancy at low rent).

Mining rents—

Income tax. *See* **Income tax** (Mining rents).

New tenancy—**Business premises—**

Determination of rent. *See* **Landlord and tenant** (Rent—Business premises—New tenancy).

Terms. *See* **Landlord and tenant** (Business premises—Terms of new tenancy—Rent).

Quarterly—

Time at which rent becomes due. *See* **Landlord and tenant** (Rent—Time at which rent becomes due—Quarterly rent).

Rebate—

Local authority houses. *See* **Housing** (Local authority houses—Rent—Rebate).

Recovery—**Arrears—**

Rent controlled premises. *See* **Rent restriction** (Possession—Procedure—Non-payment of rent).

Limitation of action—

Evacuation area. *See* **Emergency legislation** (Evacuation area—Recovery of rent—Limitation of action).

Reduction. *See* **Landlord and tenant** (Rent—Reduction).

Regulated. *See* **Rent restriction** (Rent).

Renewal of lease—

Option to renew at rent stated. *See* **Landlord and tenant** (Renewal of lease—Option—Option to renew at rent stated).

Reserved. *See* **Landlord and tenant** (Rent—Rent reserved).

Restriction. *See* **Rent restriction**.

Review. *See* **Landlord and tenant** (Rent—Review).

Suspension of rent. *See* **Landlord and tenant** (Rent—Suspension of rent).

RENT ASSESSMENT COMMITTEE

Fair rent. *See* **Rent restriction** (Fair rent—Rent assessment committee).

Solicitor—

Effect of membership of panel on practice of solicitor before committee or rent officer. *See* **Solicitor** (Practice—Rent assessment committee—Effect of membership of panel on practice of solicitor before committee or rent officer).

RENT CONTROL**Application of Rent Control Act—****Retrospective effect—**

Proceedings for possession commenced by landlord and case heard before coming into operation of Act—Judgment reserved—No order made until after Act in operation—Landlord and Tenant (Rent Control) Act 1949, s 10. *Jonas v Rosenberg* [1950] 1 296, CA.

Determination of reasonable rent for dwelling-house—**Dwelling-house—**

Premises containing shop and dwelling accommodation—Covenant by tenant not to use premises save as shop for greengrocer's business—Whether a 'dwelling-house'—Rent and Mortgage Interest Restrictions Act 1939, s 3(3)—Landlord and Tenant (Rent Control) Act 1949, s 1(1). *R v Brighton and Area Rent Tribunal, ex parte Slaughter* [1954] 1 423, QBD.

Premises containing shop and dwelling accommodation—Covenant by tenant to use premises for no business other than that of a tobacconist—Whether a 'dwelling-house'—Rent and Mortgage Interest Restrictions Act 1939, s 3(3)—Landlord and Tenant (Rent Control) Act 1949, s 1(1). *R v Folkestone Rent Tribunal, ex parte Webb* [1954] 1 427, QBD.

Jurisdiction of tribunal—

Determination of question on which jurisdiction depends—Unfurnished letting—Document signed by tenant describing letting as furnished alleged to be a sham—Proceedings before tribunal—Admissibility in evidence of unstamped documents—Landlord and Tenant (Rent Control) Act 1949, s 1(1). *R v Fulham, Hammersmith and Kensington Rent Tribunal, ex parte Zerek* [1951] 1 482, KBD.

RENT CONTROL (cont)

Determination of reasonable rent for dwelling-house (cont)—

Jurisdiction of tribunal (cont)—

Exclusion of jurisdiction where limitation of rent in force under any enactment—Dwelling-house built under building licence—Maximum rent to be charged on letting stated in application for licence—No condition limiting rent attached to licence—Condition limiting rent and purporting to be condition 'attached to a building licence' registered as local land charge under Land Charges Act 1925, s 15, pursuant to Building Materials and Housing Act 1945, 2x8(1)—Landlord s 8(1)—Landlord and Tenant (Rent Control) Act 1949, s 1(7)(b). **R v Barnet etc Rent Tribunal, ex parte Reeds Investments Ltd** [1950] 2 848, KBD.

Rectification of written tenancy agreement—Landlord and Tenant (Rent Control) Act 1949, s 1. **R v Hackney, Islington and Stoke Newington Rent Tribunal, ex parte Keats** [1950] 2 138, KBD.

Reduction of rent—House converted into flats—Flat first rated as separate hereditament at £80—No appointment of assessment of dwelling-house—Landlord and Tenant (Rent Control) Act 1949, s 1(1). **R v Sidmouth Rent Tribunal, ex parte Sellek** [1951] 1 107, KBD.

Rental equivalent—Determination—Premium—Payment to lessor for work done to premises—Payment to lessor of half profit on assignment of lease—Landlord and Tenant (Rent Control) Act 1949, ss 1(5), 18(2), Sch I, Part I, para 1. **R v Fulham, Hammersmith and Kensington Rent Tribunal, ex parte Philippe** [1950] 2 211, KBD.

Procedure before tribunal—

Need to hear parties or evidence—Landlord and Tenant (Rent Control) Act 1949, s 1(1)—Landlord and Tenant (Rent Control) Regulations 1949 (S I 1949 No 1096), regs 4, 5, 8(1). **R v Brighton and Area Rent Tribunal, ex parte Marine Parade Estates (1936) Ltd** [1950] 1 946, KBD.

Right to make application—

Application by deserted wife in occupation of matrimonial home—Husband the tenant—No authority to act as husband's agent—Landlord and Tenant (Rent Control) Act 1949, s 1(1). **R v Twickenham Rent Tribunal, ex parte Dunn** [1953] 2 734, QBD.

Validity of application—

Misnomer of landlord—Landlord and Tenant (Rent Control) Regulations 1949 (S I 1949 No 1096), reg 3(2)(as amended by Landlord and Tenant (Rent Control)(Amendment) Regulations 1950 (S I 1950 No 1763), reg 2). **Francis Jackson Developments Ltd v Hall** [1951] 2 74, CA.

Withdrawal of application—

Jurisdiction of tribunal to proceed with hearing—Landlord and Tenant (Rent Control) Act 1949, s 1(1). **R v Hampstead and St Pancras Rent Tribunal, ex parte Goodman** [1951] 1 170, KBD.

Furnished letting—

Increase of rent—

Increase above contractual rent—Whether recoverable. **Villa D'Este Restaurant Ltd v Burton** [1957] 1 862, CA.

Notice to quit—

Notice given after tenancy referred to tribunal—Validity and effect—Furnished Houses (Rent Control) Act 1946, s 5. **Alexander v Springate** [1951] 1 351, KBD.

Reference to tribunal of contract for furnished letting. *See* Reference to tribunal of contract for furnished letting, *post*.

Rent in excess of registered rent—

Recovery—Amount recoverable—Payment of any sum in excess of the rent so entered—Furnished Houses (Rent Control) Act 1946, s 4(1)(a). **Henry v Taylor** [1954] 1 721, CA.

Rent of premises fixed and registered—Subsequent letting of part of premises at rent exceeding that registered—Whether an offence—Furnished Houses (Rent Control) Act 1946, s 4 (1)(a). **Gluchowska v Tottenham Borough Council** [1954] 1 408, QBD.

Requirement to pay—Rent under lease reduced—Option by deed to renew lease at original rent—Validity of option—Furnished Houses (Rent Control) Act 1946, s 4(1)(a). **Mauray v Durlay Chine (Investments) Ltd** [1953] 2 458, CA.

Right of tenant to recover excess rent—Rent of premises fixed and registered—Subsequent letting of premises to another tenant at rent exceeding that registered—Some money spent by landlord on repairs, etc, before the subsequent letting—Right of tenant, under subsequent letting, to recover excess rent—Furnished Houses (Rent Control) Act 1946, s 4(1)(a) (2). **De Jean v Fletcher** [1959] 1 602, CA.

Premium—

Prohibition of premiums on grant or assignment of tenancy—

Excessive prices for furniture to be treated as premiums—Excessive price—Price exceeding 'reasonable price of articles'—Landlord and Tenant (Rent Control) Act 1949, s 3(1)(b). **Eales v Dale** [1954] 1 717, CA.

Payment by tenants to builders for conversion of dwelling-houses into flats—Landlord and Tenant (Rent Control) Act 1949, ss 2(1), 18(2), Sch I, Part I, para 1. **R v Birmingham (West) Rent Tribunal, ex parte Edgbaston Investment Trust Ltd** [1951] 1 198, KBD.

Purchase price of goodwill of business—Landlord and Tenant (Rent Control) Act 1949, ss 2(2), 18(2), Sch I, Part I, para 1. **R v Barnet etc Rent Tribunal, ex parte Millman** [1950] 2 216, KBD.

Requirement of payment as condition of continuance of lease—Proviso for re-entry on breach of any of tenant's covenants—Agreement in 1948 to pay premium for grant of 14 years' lease—Premium payable by instalments over ten years—First annual instalment of premium falling due after 2nd June 1949—Demand for payment of instalment—Instalments of premium not additional rent—Landlord and Tenant (Rent Control) Act 1949, s 2(1). **Regor Estates Ltd v Wright** [1951] 1 219, CA.

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Reference to tribunal of contract for furnished letting—

Contract under which lessee entitled to exclusive occupation of part of house—

Exclusive occupation—Meaning—Furnished room—Contract for 'paying guest' to occupy furnished room at a weekly charge—Landlady to have access to room at all times—Contract referred to rent tribunal—Jurisdiction—Furnished Houses (Rent Control) Act 1946, s 2(1). **R v Battersea, Wandsworth, Mitcham and Wimbledon Rent Tribunal, ex parte Parikh** [1957] 1 352, QBD.

Contract whereby lessee granted right to occupy house as residence in consideration of rent which includes payment for use of furniture or for services—

Furniture—Electric clock—Curtains—Gas cooker—Ascot water heater—Furnished Houses (Rent Control) Act 1946, s 2(1). **R v Blackpool Rent Tribunal, ex parte Ashton** [1948] 1 900, KBD.

Rent which includes payment for use of furniture or for services—Meaning—Need of contractual obligation of landlord—Breach of contract—Jurisdiction of tribunal—Furnished Houses (Rent Control) Act 1946, ss 2(1), 12(1). **R v Hampstead and St Pancras Rent Tribunal, ex parte Ascot Lodge Ltd** [1947] 2 12, KBD.

Residence—Use by tenant partly for business purposes and partly as residence—Boarding house—Whether occupation as a 'residence'—Furnished Houses (Rent Control) Act 1946, s 2(1). **R v York, Harrogate, Ripon and Northallerton Areas Rent Tribunal, ex parte Ingle** [1954] 1 440, QBD.

Jurisdiction of tribunal—

Determination of collateral question on which jurisdiction depends—Existence of tenancy at time of reference—Furnished Houses (Rent Control) Act 1946, s 2(1), (2). **R v City of London etc Rent Tribunal, ex parte Honig** [1951] 1 195, KBD.

Determination of question on which jurisdiction depends—Contract of tenancy—Identity of landlord—Circumstances of landlord—Furnished Houses (Rent Control) Act 1946, s 2(2). **R v Paddington and St Marylebone Rent Tribunal, ex parte Haines** [1961] 3 1047, QBD.

Increase of contractual rent—Whether increase recoverable—Furnished Houses (Rent Control) Act 1946, s 2(2) (3). **Villa D'Este Restaurant Ltd v Burton** [1957] 1 862, CA.

New reference—Furnished house—Rent fixed on landlord's application—Further reference by new tenant—No change of circumstances—Jurisdiction to entertain new reference—Furnished Houses (Rent Control) Act 1946, s 2(2). **R v Fulham, Hammersmith and Kensington Rent Tribunal, ex parte Gormly** [1951] 2 1030, KBD.

Re-consideration of registered rent—Change of circumstances—Receipt by landlord of war damage compensation—Furnished Houses (Rent Control) Act 1946, s 2(3). **R v Fulham, Hammersmith and Kensington Rent Tribunal, ex parte Hierowski** [1953] 2 4, QBD.

Reference of lease to the tribunal by assignee of lease—Whether tribunal had jurisdiction to hear reference—Furnished Houses (Rent Control) Act 1946, s 2. **R v Tottenham and District Rent Tribunal, ex parte Northfield (Highgate) Ltd** [1956] 2 863, QBD.

References to tribunal by local authority—Reference of 555 flats by local authority—Validity of reference—Taking into account by tribunal of matters not discussed at hearing—Powers and duties of tribunals—Furnished Houses (Rent Control) Act 1946, s 2(1). **R v Paddington and St Marylebone Rent Tribunal, ex parte Bell London and Provincial Properties Ltd** [1949] 1 720, KBD.

Tenancy surrendered after reference to tribunal—Whether tribunal has jurisdiction—Furnished Houses (Rent Control) Act 1946, s 2(2). **R v West London Rent Tribunal, ex parte Napper** [1965] 3 734, QBD.

Reduction of rent—

Reduction below amount of standard rent—Attachment of rent to premises in rem—Reduction 'affecting' Rent Restrictions Acts—Furnished Houses (Rent Control) Act 1946, ss 2(2), 3(2), 7. **R v Fulham, Hammersmith and Kensington Rent Tribunal, ex parte Marks** [1951] 2 465, KBD.

Reduction below amount of standard rent—Furnished Houses (Rent Control) Act 1946, s 7. **R v Paddington and St Marylebone Rent Tribunal, ex parte Bedrock Investments Ltd** [1948] 2 528, CA.

Rent—

Determination of reasonable rent for dwelling-house. *See* Determination of reasonable rent for dwelling-house, *ante*.

Security of tenure—

Application to tribunal—

Validity—Misnomer of landlord—Landlord and Tenant (Rent Control) Act 1949, s 11—Landlord and Tenant (Rent Control) Regulations 1949 (S 1 1949 No 1096), reg 3(2)(as amended by Landlord and Tenant (Rent Control)(Amendment) Regulations 1950 (S 1 1950 No 1763), reg 2). **Francis Jackson Developments Ltd v Hall** [1951] 2 74, CA.

Power of tribunal to extend period—

Notice to quit given more than three months after decision of tribunal—Furnished Houses (Rent Control) Act 1946, s 5—Landlord and Tenant (Rent Control) Act 1949, s 11(1) (2)(b). **R v St Helens and Area Rent Tribunal, ex parte Pickavance Preston and Area Rent Tribunal v Pickavance** [1953] 2 438, HL.

Period extended—Application for further extension adjourned—Extended period expired—Jurisdiction of tribunal to grant further extension—Landlord and Tenant (Rent Control) Act 1949, s 11(2)(a)(b). **R v Paddington South Rent Tribunal, ex parte Millard** [1955] 1 691, QBD.

Reference to tribunal after notice to quit—Furnished Houses (Rent Control) Act 1946, s 5—Landlord and Tenant (Rent Control) Act 1949, s 11(1). **R v Folkestone and Area Rent Tribunal, ex parte Sharkey** [1951] 2 921, KBD.

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Shared accommodation—

Accommodation shared by tenant and sub-tenant—

Vacation of premises by tenant—Landlord's right to possession against sub-tenant—Landlord and Tenant (Rent Control) Act 1949, s 7. *Solomon v Orwell* [1954] 1 874, CA.

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Abandonment of statutory tenancy—

Acquisition of rights of mortgagee—

Acquisition by tenant—Whether tenant's acquisition of rights of mortgagee amounted to abandonment. *Silsby v Holliman* [1955] 2 373, ChD.

Agricultural worker—

Dwelling-house required for his occupation—

Change of employment—Former agricultural labourer changing to other employment of former landlord and remaining in house. *Duncan v Hay* [1956] 3 555, CA.

Death of farm worker referred to in certificate—Another farm worker engaged—No new certificate obtained—Rent and Mortgage Interest Restrictions (Amendment) Act 1933, Sch I, para (g) (ii). *Harris v Rowley* [1949] 2 524, CA.

Employee neither named nor described in certificate of agricultural committee—Sufficiency of certificate—Rent and Mortgage Interests Restrictions (Amendment) Act 1933, s 3, Sch I, para (g). *T R Pickford & Son v Mace* [1943] 2 321, CA.

Evidence—Certificate of War Agricultural Executive Committee—Whether certificate conclusive evidence that dwelling-house was 'reasonably' required—Other suitable accommodation on landlord's property—Rent and Mortgage Interest Restrictions (Amendment) Act 1933, Sch I, para (g), (ii). *Harris v Brent* [1945] 1 386, CA.

Alterations—

Combination of houses—

Two controlled houses combined into one—Whether combined dwelling-house controlled—Rent and Mortgage Interest Restrictions (Amendment) Act 1933, ss 1(2), 16—Increase of Rent and Mortgage Interest (Restrictions) Act 1938, s 2. *R & P Properties Ltd v Baldwin* [1938] 4 845, CA.

Alternative accommodation—

Dwelling-house—

Absence of garage irrelevant—Rent and Mortgage Interest Restrictions (Amendment) Act 1933, s 3(1), Sch I, para (h). *Briddon v George* [1946] 1 609, CA.

House let with café and used as boarding house—Rent and Mortgage Interest Restrictions (Amendment) Act 1933, ss 3(1)(b)(3)(a)—Rent and Mortgage Interest Restrictions Act 1939, s 3(3). *Luttrell v Addicott* [1946] 2 625, CA.

Two dwelling-houses under same roof but separated by third dwelling-house—Rent and Mortgage Interest Restrictions (Amendment) Act 1933, s 3(3)(b). *Selwyn v Hamill* [1948] 1 70, CA.

Part of premises as alternative to whole—

Offer of share of house to tenant of whole house—Rent and Mortgage Interest Restrictions (Amendment) Act 1933, s 3(1)(b). *Barnard v Towers* [1953] 2 877, CA.

Offer to tenant of part of living accommodation presently let to him—Rent Act 1968, s 10(1)(a). *Mykolyshyn v Noah* [1971] 1 48, CA.

Sub-tenant of part of house purchasing reversion—Whether part of house occupied by tenant suitable alternative accommodation as compared with whole house—Rent and Mortgage Interest Restrictions (Amendment) Act 1933, s 3(1)(b). *Parmee v Mitchell* [1950] 1 872, CA.

Reasonable to make order—

Consideration of need to house refugees and invalid—Rent and Mortgage Interest Restrictions (Amendment) Act 1933, s 3(1)(b). *Cumming v Danson* [1942] 2 653, CA.

Security of tenure—

Offer of house owned by local authority—Rent and Mortgage Interest Restrictions (Amendment) Act 1933, s 3(2)(3). *Sills v Watkins* [1955] 3 319, CA.

Statutory tenant of whole house offered weekly tenancy of part of house—Proposal by landlord to convert house into two separate and self-contained premises—Converted premises decontrolled—Rent and Mortgage Interest Restrictions (Amendment) Act 1933, s 3(3)(b)—Housing Repairs and Rents Act 1954, s 35(1)(a). *Scrase v Windust* [1955] 2 104, CA.

Suitable to needs of tenant and family—

Exclusion from family of housekeeper and her husband and child—Rent and Mortgage Interest Restrictions (Amendment) Act 1933, s 3(3)(ii). *Darnell v Millwood* [1951] 1 88, CA.

Inclusion in family of married sons and their wives living with tenant—Lodger—More than one house as alternative accommodation—Rent and Mortgage Interest Restrictions (Amendment) Act 1933, s 3(3). *Standingford v Probert* [1949] 2 861, CA.

Suitable to needs of tenant as regards extent and character—

Environmental matters—Noise and smell—Tenant of small flat in quiet residential street—Claim for possession by landlords—Tenant offered more spacious flat by landlords—New flat in busy traffic thoroughfare subject to noise from traffic and other sources and to smell from nearby fish and chip shop—Whether noise and smell relevant matters in considering suitability of new flat to needs of tenant—Rent Act 1968, s 10(1), Sch 3, Part IV, para 3(1). *Redspring Ltd v Francis* [1973] 1 640, CA.

Insufficient room for all tenant's furniture—Whether suitable—Rent Act 1968, s 10(1)(a), Sch 3, Part IV, para 3(1)(b). *Mykolsyshyn v Noah* [1971] 1 48, CA.

Suitable to needs of tenant and family—

Mother-in-law—Whether tenant's mother-in-law included in 'family'—Rent and Mortgage Interest Restrictions (Amendment) Act 1933, s 3(3). *Scrase v Windust* [1955] 2 104, CA.

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- RENT RESTRICTION (cont)**
Alternative accommodation (cont)—
 Suitable to needs of tenant as regards extent and character—
 Tenant an artist—Three rooms for living and painting—Two of the three rooms offered as alternative accommodation—Rent Act 1968, s 10(1)(a), Sch 3, Part IV, para 3(1)(b). **MacDonnell v Daly** [1969] 3 851, CA.
- Bona fide let at rent which includes payments in respect of attendance or use of furniture—**
Attendance—
 Furniture—Amount fairly attributable to attendance or use of furniture—'Substantial portion' of 'whole rent'—Rent and Mortgage Interest Restrictions Act 1923, s 10(1) (as amended by Rent and Mortgage Interest Restrictions Act 1939, Sch 1)—Rent and Mortgage Interest Restrictions Act 1939, s 3(2)(b). **Property Holding Co Ltd v Mischeff** [1948] 1 1, HL, **Palser v Grinlin** [1948] 1 1, HL.
- Business premises—**
 Limit on increase of rent. *See* **Landlord and tenant** (Rent—Limitation—Prohibition on increase of rent—Business premises).
- Contractual tenancy—**
 Notice increasing rent to standard rent—
 Notice invalid as out of time—Standard rent paid by tenant—Whether contractual tenancy ended—Estoppel. **Re Swanson's Agreement** [1946] 2 628, ChD.
- Notice to quit—**
 Assignment by contractual tenant after notice but before its expiration—No prohibition in tenancy agreement against assignment—Assignee becoming statutory tenant—Whether landlord entitled to damages for failure of tenant to deliver up premises at end of term—Rent and Mortgage Interest Restrictions (Amendment) Act 1933, s 3(1), Sch 1, para(d). **Regional Properties Ltd v Frankenschwerth** [1951] 1 178, CA.
- Costs—**
 Action in county court—
 Action for possession—Landlord successful in establishing jurisdiction of court to grant relief—Order for possession refused as being too harsh in circumstances—Landlord awarded costs of action. **Ottway v Jones** [1955] 2 585, CA.
- Action in High Court—**
 Claim arising out of Acts raised in defence—Increase of Rent and Mortgage Interest (Restrictions) Act 1920, s 17(2). **Lee v K Carter Ltd** [1948] 2 690, CA.
- Claim for possession and damages for breach of covenant—Joinder with claim for trespass—**
 Trespass of trifling nature—Increase of Rent and Mortgage Interest (Restrictions) Act 1920, s 17(2)—County Courts Act 1934, ss 40(1), 47(1). **Tideway Investment and Property Holdings Ltd v Wellwood** [1952] 2 514, CA.
- House within Rent Restrictions Acts—Acts not pleaded in defence—Increase of Rent and Mortgage Interest (Restrictions) Act 1920, s 17(2). Jaslowitz v Burstein** [1948] 1 40, KBD.
- Rent claimed £370—Whether claim arising out of Rent Restrictions Acts—Increase of Rent and Mortgage Interest (Restrictions) Act 1920, s 17(2). A J Smith & Co Ltd v Kirby** [1947] 1 459, KBD.
- County court—**
Jurisdiction—
 Breach of covenant to repair in original tenancy agreement—Claim for £414 damages—Increase of Rent and Mortgage Interest (Restrictions) Act 1920, ss 15(1), 17(2). **Wolfe v Clarkson** [1950] 2 529, CA.
- Furnished house—Whether apportionment provisions of Rent Restrictions Acts apply—**
 County Courts Act 1934, s 48(1)—Increase of Rent and Mortgage Interest (Restrictions) Act 1920, s 12(2), proviso (i)—Rent and Mortgage Interest Restrictions Act 1923, s 10. **Somersfield v Robin** [1946] 1 218, CA.
- Crown property—**
 Flat owned by county Territorial Association—
 Exemption from Rent Restrictions Acts. **Territorial Forces Assn v Philpot** [1947] 2 376, KBD.
- House owned by British Transport Commission—**
 Application of Rent Restriction Acts. **Tamlin v Hannaford** [1949] 2 327, CA.
- House owned by territorial association—**
 Application of Rent Restriction Acts—Territorial Army Regulations 1936 (S R & O 1936 No 1166), reg 918. **London County Territorial & Auxillary Forces Assn v Nichols** [1948] 2 432, CA.
- Death of tenant—**
 Claim by adopted child to remain in possession—
 De facto adoption—Increase of Rent and Mortgage Interest (Restrictions) Act 1920, s 12(1)(g). **Brock v Wollams** [1949] 1 715, CA.
- Claim by child to remain in possession—**
 Alternative accommodation provided under statute before mother's death—Daughter claiming statutory tenancy of alternative accommodation—Increase of Rent and Mortgage Interest (Restrictions) Act 1920, s 12(1)(g). **Strutt v Panter** [1953] 1 445, CA.
- Contractual tenancy—Premises let below standard rent—Increase of rent demanded by landlord and paid by tenant—No notice of increase served—Increase to a figure still below standard rent—Increase of Rent and Mortgage Interest (Restrictions) Act 1920, ss 3(2), 12(1)(g). Mills v Bryce** [1951] 1 111, CA.
- Conversion of statutory tenancy into contractual tenancy—Right of daughter of tenant to remain in possession—Increase of Rent and Mortgage Interest (Restrictions) Act 1920, s 12(1)(g). The Bungalows (Maidenhead) Ltd v Mason** [1954] 1 1002, CA.
- Daughter sub-tenant. Edmunds v Jones** (1952) [1957] 3 23n, CA.

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Death of tenant (cont)—

Claim by child to remain in possession (cont)—

Tenancy protected by Rent Acts 1920—1939 coming to an end before commencement of Rent Act 1965—Widow succeeding as statutory tenant—Death of widow before commencement of Act of 1965—Claim for possession against child resident with widow for over six months before her death—Claim heard after commencement of Act of 1965—Whether child's occupation protected by Act of 1965—'Tenancy'—'Regulated tenancy'—Rent Act 1965, s 20(1). **Brown v Conway** [1967] 2 793, CA.

Vesting of tenancy in the probate judge—Notice to quit—Subsequent grant of letters of administration to son—Doctrine of relation back—Increase of Rent and Mortgage Interest (Restrictions) Act 1920, s 12(1)(f). **Fred Long and Sons Ltd v Burgess** [1949] 2 484, CA.

Vesting of tenancy in the probate judge—Notice to quit—Increase of Rent and Mortgage Interest (Restrictions) Act 1920, s 12(1)(g). **Smith v Mather** [1948] 1 704, CA.

Claim by first cousin to remain in possession—

Consanguinity only relevant consideration—Increase of Rent and Mortgage Interest (Restrictions) Act 1920, s 12(1)(g). **Langdon v Horton** [1951] 1 60, CA.

Claim by friend to remain in possession—

Woman looking after and nursing tenant for many years—No family relationship—Increase of Rent and Mortgage Interest (Restrictions) Act 1920, s 12(1)(g). **Ross v Collins** [1964] 1 861, CA.

Claim by mistress to remain in possession—

Parties and children living as a family—Increase of Rent and Mortgage Interest (Restrictions) Act 1920, s 12(1)(g). **Hawes v Evenden** [1953] 2 737, CA.

Claim by niece to remain in possession—

Niece of tenant's wife—Nursing of tenant and wife for substantial period—Increase of Rent and Mortgage Interest (Restrictions) Act 1920, s 12(1)(g). **Jones v Whitehill** [1950] 1 71, CA.

Claim by reputed spouse to remain in possession—

Child born to couple living in unmarried association—No de facto adoption of child by putative father—Increase of Rent and Mortgage Interest (Restrictions) Act 1920, s 12(1)(g). **Perry v Dembowski** [1951] 2 50, CA.

No issue of couple living in unmarried association—Increase of Rent and Mortgage Interest (Restrictions) Act 1920, s 12(1)(g). **Gammans v Ekins** [1950] 2 140, CA.

No issue of couple living in unmarried association—Rent Act 1968, Sch 1, para 3. **Dyson Holdings Ltd v Fox** [1975] 3 1030, CA.

Claim by sister to remain in possession—

Contractual tenancy determined by notice to quit—Increase of Rent and Mortgage Interest (Restrictions) Act 1920, s 12(1)(g). **Thynne v Salmon** [1948] 1 49, CA.

Claim by sole executrix to remain in possession—

Contractual tenancy terminated by notice to quit—Whether executrix 'tenant' within the meaning of the Rent Restrictions Acts—Increase of Rent and Mortgage Interest (Restrictions) Act 1920, s 12(1)(f)—Rent and Mortgage Interest Restrictions (Amendment) Act 1933, s 3(1). **Lawrence v Hartwell** [1946] 2 257, CA.

Claim by widow to remain in possession—

Allegation that tenant a contractual tenant—Claim and acceptance by landlord from tenant of statutory increases of rent—No statutory notice of increase—Increase of Rent and Mortgage Interest (Restrictions) Act 1920, s 12(1)(g). **Baxter v Eckersley** [1950] 1 139, CA.

Contractual tenancy determined by notice to quit—Increase of Rent and Mortgage Interest (Restrictions) Act 1920, s 12(1)(g). **Moodie v Hosegood** [1951] 2 582, HL.

Disagreement between members of family regarding right to possession—

Action by one member to eject the other—No application made to county court under Increase of Rent and Mortgage Interest (Restrictions) Rules 1920 (S R & O 1920 No 1261), r 1(d), r 19—Increase of Rent and Mortgage Interest (Restrictions) Act 1920, s 12(1)(g). **Taylor v Willoughby** [1953] 2 642, CA.

Competing claims of father and son—Son's claim more meritorious but father's need greater—Weighing competing factors—Tenancy granted to father—Rent Act 1968, Sch 1, para 3. **Williams v Williams** [1970] 3 988, CA.

Wishes of deceased tenant—Whether wishes of deceased tenant relevant circumstances to be considered in deciding who should be statutory tenant—Increases of Rent and Mortgage Interest (Restrictions) Act 1920, s 12(1)(g). **Trayfoot v Lock** [1957] 1 423, CA.

Family claim to possession—

Death of widow of tenant—No further statutory protection—Increase of Rent and Mortgage Interest (Restrictions) Act 1920, s 12(1)(g). **Summers v Donohue** [1945] 1 599, CA.

Limitation to one succession only—Increase of Rent and Mortgage Interest (Restrictions) Act 1920, s 12(1)(g)—Interpretation Act 1889, s 1(1)(b). **Dealex Properties Ltd v Brooks** [1965] 1 1080, CA.

Widow sole executrix—No probate taken out—Death of widow—Right of occupation of member of the family—Increase of Rent and Mortgage Interest (Restrictions) Act 1920, s 12(1)(g). **Whitmore v Lambert** [1955] 2 147, CA.

Widow statutory tenant after death of tenant—Whether statutory tenancy passed to daughters on death of widow—Increase of Rent and Mortgage Interest (Restrictions) Act 1920, s 12(1)(g)—Rent Restrictions (Notices of Increase) Act 1923, s 1(1). **Phillips v Welton** [1948] 2 845, CA.

Order for possession during tenant's lifetime—

Conditions on which order suspended not fulfilled by tenant—No enforcement of order by landlord—Effect on rights of member of tenant's family—Increase of Rent and Mortgage Interest (Restrictions) Act 1920, ss 5(2), 12(1)(g), 15(1)—County Court Rules 1936, Form 138. **Sherrin v Brand (orsee Phelps)** [1956] 1 194, CA.

RENT RESTRICTION

Death of tenant—

Order for possession during tenant's lifetime—

Effect of conditional suspension of order on rights of member of tenant's family—Form of order—Increase of Rent and Mortgage Interest (Restrictions) Act 1920, s 12(1)(g). **Mills v Allen** [1953] 2 534, CA.

Unconditional order suspended—Death of statutory tenant before date for possession—Increase of Rent and Mortgage Interest (Restrictions) Act 1920, s 12(1)(g). **American Economic Laundry Ltd v Little** [1950] 2 1186, CA.

Residing with—

Grand-daughter and family having one room to themselves and sharing kitchen with tenant for weekly payment—Separate housekeeping arrangements and meals—Increase of Rent and Mortgage Interest (Restrictions) Act 1920, s 12(1)(g). **Collier v Stoneman** [1957] 3 20, CA.

Son living in flat six months before death of mother in order to look after, clean and air it—Mother in hospital for some years before death—Whether 'residing with' his mother—Rent Act 1968, Sch 11, para 7. **Foreman v Beagley** [1969] 3 838, CA.

Son returning to live with mother after deserting wife and children—Matrimonial home remaining in son's name—Death of mother seven months after son's return—Whether son entitled to succeed mother as statutory tenant—Rent Act 1968, Sch 1, para 7. **Morgon v Murch** [1970] 2 100, CA.

Sole claimant—

Application for declaration—Application by landlord to vary order of registrar—Admission of fresh evidence—Increase of Rent and Mortgage Interest (Restrictions) Act 1920, s 12(1)(g)—Increase of Rent and Mortgage Interest (Restrictions) Rules 1920 (S R & O 1920 No 1261), rr 1(d), 7(b), 19. **Butler v Hudson** [1953] 2 418, CA.

Tenant leaving no widow—

Implication of residence with tenant at time of his death—'Member of tenant's family'—Woman living in adultery with tenant—Increase of Rent and Mortgage Interest (Restrictions) Act 1920, s 12(1)(g). **Tinkham v Perry** [1951] 1 249, CA.

Declaration that tenant protected by Rent Acts—

Jurisdiction of county court—

Ancillary to judgment for damages for breach of covenant for quiet enjoyment. **Kenny v Preen** [1962] 3 814, CA.

Decontrol—

Actual possession by landlord—

Controlled rooms in a dwelling-house—Occupation by a trespasser—Subsequent letting to the trespasser—Whether landlord has regained actual possession—Rent and Mortgage Interest Restrictions Act 1923, s 2(1). **Holden v Howard** [1937] 4 483, CA.

Key handed over to landlord's agent—Intention to decontrol—Rent and Mortgage Interest Restrictions Act 1923, s 2. **Goddier v Cooke** [1940] 2 533, CA.

Key handed over to landlord's agent—Premises let to new tenant at increased rent—Application to register house as decontrolled—Error in filling in form—Wrong date inserted—Whether application valid—Rent and Mortgage Interest Restrictions Act 1923, s 2—Rent and Mortgage Interest Restrictions (Amendment) Act 1933, s 2(2). **Holt v Dawson** [1939] 3 635, CA.

Key in landlord's letter-box—Rent and Mortgage Interest Restrictions Act 1923, s 2. **Thomas v Metropolitan Housing Corp'n Ltd** [1936] 1 210, CA.

Step-daughter remaining in possession on death of tenant—Break in tenancy—Rent and Mortgage Interest Restrictions Act 1923, s 2(1). **Mouser v Major** [1941] 1 180, CA.

Agreement to create new tenancy—

Notice—Whether prior notice in Form S necessary—Rent Act 1957, s 11(1), Sch 4, paras 2(2), 4. **King v Bristow** [1965] 2 134, CA.

Class C dwelling-house—

Onus of proof of decontrol—Rent and Mortgage Interest Restrictions (Amendment) Act 1933, s 1(2). **Heginbottom v Watts** [1936] 2 153, CA.

House let in two parts—

One part decontrolled—Subsequent letting of whole house—Whether subsequent letting within the Acts—Rent and Mortgage Interest Restrictions Act 1923, s 2(1). **Worthy v Lloyd** [1939] 1 474, CA.

Recovery of possession by landlord in 1924—Portions united, but redivided in a different manner in 1928—No registration of house as decontrolled—Whether portion of house controlled—Rent and Mortgage Interest Restrictions Act 1923, s 2—Rent and Mortgage Interest Restrictions (Amendment) Act 1933, s 2(2). **Rynolds v Phillips** [1939] 3 678, CA.

New tenancy—

Former tenancy of flat including right to use of garden—New tenancy of another flat with same right—Whether right part of the 'premises'—Rent Act 1957, s 11(2), proviso. **M & J S Properties Ltd v White** [1959] 2 81, CA.

New tenancy of part of decontrolled premises granted while possession still protected—Whether person whose possession is so protected is a statutory tenant—Whether newly demised part of premises subject to Rent Acts—Rent Act 1957, s 11(2) proviso, (7), Sch 4, para 2. **Cheesman v Bagnall** [1962] 2 195, QBD.

Possession—

Suspension of execution of order for possession—Costs—Landlord and Tenant (Temporary Provisions) Act 1958, s 4(2). **Spyropoulos v McClelland** [1959] 3 319, CA.

RENT RESTRICTION (cont)

Decontrol (cont)—

Rateable value—

Flat and garage assessed for rates on Nov 7, 1956, as one hereditament—Division of assessment on tenant's proposal—Alteration having effect before Nov 7 effect before Nov 7, 1956—Whether alteration of rateable value effective for determining question of decontrol—Validity—Rent Act 1957, Sch 5, paras 1(a)(b), 2(1). **Holland v Ong** [1958] 1 574, CA.

Recontrol—

House decontrolled before 1933, let again after 1933—Whether house recontrolled—Retrospective effect of statutes—Rent and Mortgage Interest Restrictions (Amendment) Act 1933, s 2. **Brooks v Brimcome** [1937] 2 637, CA.

Registration of premises as decontrolled—

Effect of failure to register—Rent and Mortgage Interest Restrictions Act 1923, s 2—Rent and Mortgage Interest Restrictions (Amendment) Act 1933, s 2(2)—Rent and Mortgage Interest Restrictions Act 1939, s 9(3), Sch II. **Tibber v Upcott** [1940] 2 159, CA.

Separate and self-contained premises produced by conversion of other premises—

Need for change of identity—Ground floor of house made into self-contained premises—Housing Repairs and Rents Act 1954, s 35(1)(a). **Higgins v Silverston** [1956] 2 893, CA.

Suspension of execution of order for possession—

Landlord's proposal for grant of new tenancy not accepted by tenants—Tenants actuated by hope of future legislation more favourable to them—Reasonableness of refusal—Landlord and Tenant (Temporary Provisions) Act 1958, s 3(1)(a). **Clifford Sabey (Contractors) Ltd v Long** [1959] 2 462, CA.

Dwelling-house—

Application of Acts to dwelling-house—

Burden of proof—Payment of rent—Whether tenancy or service occupation—Increase of Rent and Mortgage Interest (Restrictions) Act 1938, s 7(1). **Ford v Langford** [1949] 1 483, CA.

Bed-sitting room in hotel—

Provision of linen and cleaning services—Lessee staying for three years—Whether hotel a house—Whether lessee had exclusive occupation of a residence—Rent Act 1968, ss 70(1), 84(1). **Luganda v Service Hotels Ltd** [1969] 2 692, CA.

House destroyed by enemy action—

Contractual tenancy not determined—House rebuilt—Tenant refused possession by landlord—Notice to tenant to quit—Claim by tenant for possession. **Denman v Brise** [1948] 2 141, CA.

House owned by local authority—

Protection of sub-tenant—Rent and Mortgage Interest Restrictions Act 1939, s 3(2)(c). **Percy G Moore Ltd v Stretch** [1951] 1 228, CA.

House rendered uninhabitable by bomb—

No loss of identity—Use by tenant for business purposes—Notice to quit served before repair. **Morleys (Birmingham) Ltd v Slater** [1950] 1 331, CA.

Notice to tenant to quit before rebuilding completed—Right of tenant to occupy rebuilt house—Rent and Mortgage Interest Restrictions Act 1939, s 3(3)—Landlord and Tenant (War Damage) (Amendment) Act 1941, s 1(6). **Ellis & Sons, Amalgamated Properties Ltd v Sisman** [1948] 1 44, CA.

Improvement—

Application by landlord for determination of new fair rent. *See* Rent—Determination of fair rent—Application—Change in condition of dwelling-house, *post*.

Dwelling-house let together with land other than the site of the dwelling-house. *See* Dwelling-house let together with land other than the site of the dwelling-house, *post*.

Part of dwelling-house used for business purposes—

Boarding house—Tenant living on premises—Business not incompatible with residence as tenant—Rent and Mortgage Interest Restrictions Act 1939, s 3(3). **Kitchen's Trustee v Madders** [1949] 2 1079, CA.

Tenant's removal to another house—One room still used as a dwelling—Onus of proof—Increase of Rent and Mortgage Interest (Restrictions) Act 1920, s 12(2), proviso (ii). **Green v Coggins** [1949] 2 815, CA.

Premises converted by tenant into two self-contained flats—

Assignment of tenancy—Whether a tenancy of a dwelling-house for which a premium prohibited—Landlord and Tenant (Rent Control) Act 1949, s 2(2)(3). **Lower v Porter** [1956] 1 150, CA.

Reconstruction of war damaged dwelling-house—

Question of fact whether premises so altered as to become a new dwelling—Garage not previously forming part of the demise included in the letting—Increase of Rent and Mortgage Interest (Restrictions) Act 1920, ss 1(1), 12(1)(a). **Solle v Butcher** [1949] 2 1107, CA.

Shop and dwelling accommodation—

Covenant by tenant not to use shop save for specified business—Rent and Mortgage Interest Restrictions Act 1939 s 3(3)—Landlord and Tenant (Rent Control) Act 1949, s 1(1). **R v Brighton and Area Rent Tribunal, ex parte Slaughter** [1954] 1 423, QBD, **R v Folkestone Rent Tribunal, ex parte Webb** [1954] 1 427, QBD.

Dominant purpose immaterial—Rent and Mortgage Interest Restrictions Act 1939, s 3(3). **Whiteley v Wilson** [1952] 2 940, CA.

Lease—Covenant by tenant to use premises for specified business purposes—Rent and Mortgage Interest Restrictions (Amendment) Act 1933, s 16(1)—Rent and Mortgage Interest Restrictions Act 1939, s 3(1)(3). **Levermore v Jobey** [1956] 2 362, CA.

Subsequently let separately to same tenant under two leases—Application of Rent Acts to shop—Rent and Mortgage Interest Restrictions Act 1939, s 3(3). **Cumbes v Robinson** [1951] 1 661, CA.

RENT RESTRICTION (cont)**Dwelling-house (cont)—****Shop and dwelling accommodation (cont)—**

Sub-tenancy of dwelling accommodation for residential purposes—New lease of premises subject to sub-tenancy—Whether letting subject to Rent Acts—Increase of Rent and Mortgage Interest (Restrictions) Act 1920, ss 1, 12(2)—Rent and Mortgage Interest Restrictions Act 1939, s 3(1), (3). **British Land Co Ltd v Herbert Silver (Menswear) Ltd** [1958] 1 833, CA.

Two separated flats let together—

Rateable value of the dwelling-house—Rent and Mortgage Interest Restrictions (Amendment) Act 1933, s 16(1)—Rent and Mortgage Interest Restrictions Act 1939, ss 3(1), 7(1). **Langford Property Co Ltd v Goldrich** [1949] 1 402, CA.

Use as private house—

House and cottage contiguous but without internal communication—Covenant by tenant, in original tenancy agreement, to use 'the premises as a private dwelling-house only'—Cottage sub-let by tenant—Rent and Mortgage Interest Restrictions (Amendment) Act 1933, s 16(1)—Rent and Mortgage Interest Restrictions Act 1939, ss 3(1), 3(3). **Whitty v Scott-Russell** [1950] 1 884, CA.

Use for business purposes—

Premises let for business purposes—Tenant living on premises—No knowledge by landlord—Costs—County Court or High Court scale—Proceedings arising out of Rent Acts—Decision that Rent Acts did not apply—Increase of Rent and Mortgage Interest (Restrictions) Act ss 12(2), 17(2). **Wolfe v Hogan** [1949] 1 570, CA.

Test whether premises outside Rent Acts by reason of business use. **Vickery v Martin** [1944] 2 167, CA.

Dwelling-house let together with land other than the site of the dwelling-house—**Camping site and bungalow—**

Dominant purpose of lease the carrying on of business of letting out camping sites—Rent and Mortgage Interest Restrictions Act 1939, s 3(3). **Feyereisel v Parry** [1952] 1 728, CA.

Garage business and dwelling-house—

Premises divisible into separate entities—Dominant purpose of letting the carrying on of business—Rent and Mortgage Interest Restrictions Act 1939, s 3(3). **Thompson v Simpson** [1952] 1 431, Assizes.

Excessive charge for furniture—**Dwelling-house to which the principal Act applies—**

First letting under Rent and Mortgage Interest Restrictions Act 1939—Rent and Mortgage Interest Restrictions Act 1923, s 9(1). **Minns v Moore** [1949] 2 800, CA.

Exclusion of Acts—**Registration of living accommodation—**

Householder not in physical occupation of premises at date of registration—Relative dates of letting and registration. **Baldwin v Gurnsey** [1948] 2 165, CA.

Extension of protection to furnished tenancies—**Transitional provisions—**

Order for possession against tenant made but not executed at date Act coming into force—Court of opinion order would not have been made if Act had been in force when tenancy came to an end—Power of court to rescind or vary order—Rescission of order—Discretion—Principles governing exercise of discretion—Rent Act 1974, s 1, Sch 3, para 3(3). **John Sainesbury & Co (a firm) v Roberts** [1975] 2 801, CA.

Extortionate rent—**Limitation of time—**

Date from which time begins to run. **Stray v Docker** [1944] 1 367, KBD.

Rent including right to use kitchen, bathroom and garden in common with other tenant—

Application of Acts—Increase of Rent and Mortgage Interest (Restrictions) Act 1920, s 10. **Banks v Cope-Brown** [1948] 2 76, KBD.

Fair rent—**Application for determination—**

Application by unincorporated tenants' association—Amount of proposed rent not set out, but words used from which rent could be calculated with certainty—Whether sufficient—Whether tenant himself must put in application or sign it—Rent Regulation (Forms etc) (England and Wales) Regulations 1965 (S.I. 1965 No 1976), Sch 3, Form 4. **R v London Rent Assessment Panel, ex parte Braq Investments Ltd** [1969] 2 1012, QBD.

Failure to specify amount of rent sought to be registered—Whether fatal defect rendering application a nullity—Rent Act 1965, s 26(5), Sch 3, para 2—Rent Regulation (Forms, etc) (England and Wales) Regulations 1965 (S.I. 1965 No 1976), reg 7, Sch 3, Form 4, para 9. **Chapman v Earl** [1968] 2 1214, QBD.

Calculation on basis of 1962 capital costs—

Deduction of scarcity value—Whether deduction properly made—Rent Act 1968, s 46(1). **Anglo-Italian Properties Ltd v London Rent Assessment Panel** [1969] 2 1128, QBD.

Cost of services—

Management charge in respect of services—Selective employment tax in respect of staff—Rentals of residential staff's flats—Cost of central heating—Whether such management charge and SET allowable in calculating cost of services—Whether amount allowable in respect of rent of staff flats and of cost of central heating may be reduced below figure of actual costs, if smaller amount appropriate—Whether rent assessment committee bound to inspect staff flats—Rent Act 1965, s 27, Sch 3, para 12. **Metropolitan Properties Co Ltd v Noble** [1968] 2 313, QBD.

Evidence—

Best evidence of fair rent—Fair rent fixed for comparable properties—Presumption that assessments correct in law until contrary is proved—Contractor's theory of valuation of little weight where comparable fair rents or market rents—Rent Act 1968, s 46. **Tormes Property Co Ltd v Landau** [1970] 3 653, QBD.

Expert opinion—Whether rent assessment committee bound to accept expert opinion. **Metropolitan Properties Co (FGC) Ltd v Lannon** [1968] 1 354, QBD.

RENT RESTRICTION (cont)

Fair rent (cont)—

Regard to be had to all the circumstances—

All the circumstances other than personal circumstances—Meaning of 'personal circumstances'—Tenant's right to remain in possession—Determination of rent having regard to capital value—Capital value of house with sitting tenant less than capital value with vacant possession—Whether tenant's right to remain in possession a personal circumstance to be disregarded—Whether regard to be had to capital value with vacant possession—Rent (Scotland) Act 1971, s 42(1). **Mason v Skilling** [1974] 3 977, HL.

Locality of dwelling-house—Extent of 'locality'—Matter for decision of rent assessment tribunal—Rent Act 1968, s 46. **Palmer v Peabody Trust** [1974] 3 355, QBD.

Security of tenure—Landlord housing trust—Tenant of housing trust having no statutory security of tenure—Tenant seeking reduction of sum fixed as fair rent on account of absence of security of tenure—Whether ground for reduction of sum fixed—Rent Act 1968, s 46(1). **Palmer v Peabody Trust** [1974] 3 335, QBD.

Rent assessment committee—

Bias—Chairman living with father in other property of which associate company of landlords was landlord—Chairman advising father in dispute with his landlord—Chairman's firm acting for other tenants in that property on similar matters in dispute—Whether sufficient interest to disqualify him on account of bias. **Metropolitan Properties Co (FGC) Ltd v Lannon** [1968] 3 304, CA.

Rent determined and registered to be single figure in respect of premises affected—

Rent assessment committee to take into account future trends in assessing cost of services—Statement of principle on which committee acted with regard to services to be given—Rent Act 1965, s 28(1). **Metropolitan Properties Co (FGC) Ltd v Lannon** [1968] 3 304, CA.

Scarcity element—

Assumption that number of persons seeking to become tenants of similar dwelling-houses in locality not substantially greater than number available in locality—Locality—Meaning—Amenity available in particular area—Amenity creating excessive demand for similar flats and houses in that area—No general scarcity of similar flats and houses—Whether deduction to be made in assessing fair rent on account of scarcity element in particular area created by existence of amenity—Rent Act 1968, s 46(1)(2). **Metropolitan Property Holdings Ltd v Finegold** [1975] 1 389, QBD.

Evidence of capital value not conclusive basis of fair rent—Whether rent assessment committee entitled to act on their own knowledge in regard to scarcity element—Whether committee bound to notify intention to determine fair rent eliminating scarcity element so as to give opportunity for evidence on scarcity to be called—Rent Act 1965, s 27(1)(2). **Crofton Investment Trust Ltd v Greater London Rent Assessment Committee** [1967] 2 1103, QBD.

Validity of determination—

Tenant not in personal occupation—Whether tenancy outside jurisdiction of rent assessment committee. **Feather Supplies Ltd v Ingham** [1971] 3 556, CA.

Furnished letting—

Amount of rent attributable to use of furniture—

Articles usually furniture supplied by landlord and attached to freehold—Whether substantial part of rent for use of furniture—Rent and Mortgage Interest Restrictions Act 1939, s 3(2)(b), Sch 1. **Gray v Fidler** [1943] 2 289, CA.

Date when comparison to be made—Increase of Rent and Mortgage Interest (Restrictions) Act 1920, s 12(2)(i). **Jozwaik v Hierowski** [1948] 2 9, CA.

Date when comparison to be made—Increase of Rent and Mortgage Interest (Restrictions) Act 1920, s 12(2)(i)—Rent and Mortgage Interest Restrictions Act 1939, s 3(2)(b). **Bowness v O'Dwyer** [1948] 2 181, CA.

Furniture—Fixed cupboards, refrigerator and cooker in addition to ordinary articles of furniture—Whether substantial portion of rent for use of furniture—Increase of Rent and Mortgage Interest (Restrictions) Act 1920, s 2(1), proviso (i)—Rent and Mortgage Interest Restrictions Act 1923, s 10(1). **Maddox Properties Ltd v Klass** [1946] 1 487, KBD.

No evidence of value of furniture—Onus of proof—Increase of Rent and Mortgage Interest (Restrictions) Act 1920, s 12(2), proviso (i)—Rent and Mortgage Interest Restrictions Act 1923, s 10(1). **Hern v Palmer** [1955] 1 396, CA.

Percentage of contractual rent—Value of furniture to tenant—Need to quantify value to tenant—Recovery of excessive rent—Excess paid in period ending before tenant's application for repayment—Increase of Rent and Mortgage Interest (Restrictions) Act 1920, s 9(1)—Rent and Mortgage Interest Restrictions Act 1923, s 10(1). **Roppel v Bennett** [1948] 2 627, CA.

Substantiality of amount—Finding of fact. **Thomas v Pascall** [1969] 3 937, CA.

Substantial part of whole rent attributable to use of furniture—Determination whether part substantial—Approach of court—Changing social and economic conditions—Value of furniture on secondhand market—Shortage of housing accommodation—Rent Act 1968, s 2(3). **Woodward v Docherty** [1974] 2 844, CA.

Tenant retaining small quantity of furniture—Whether house controlled—Increase of Rent and Mortgage Interest (Restrictions) Act 1920, s 12(2)(i)—Rent and Mortgage Interest Restrictions Act 1923, s 10(1)—Rent and Mortgage Interest Restrictions Act 1939, s 3(2)(b). **Brown v Robins** [1943] 1 548, CA.

Value of furniture to tenant—Occupation for 18 months with no extra furniture—Application to rent tribunal for reduction on basis 'furnished' letting—Matters which court may take into account—Increase of Rent and Mortgage Interest (Restrictions) Act 1920, s 12(2), proviso (i)—Rent and Mortgage Interest Restrictions Act 1923, s 10(1). **Goel v Sagoo** [1969] 1 378, CA.

RENT RESTRICTIONS (cont)

Furnished letting (cont)—

Attendance—

Computation of cost of services—Increase of Rent and Mortgage Interest (Restrictions) Act 1920, s 12(2), proviso (i)—Rent and Mortgage Interest Restrictions Act 1923, s 10—Rent and Mortgage Interest Restrictions Act 1939, ss 3(2)(b), 10. **Property Holding Co Ltd v Mischeff** [1948] 1 1, HL.

Removal of refuse—Carrying of coal—Principles applicable—Rent and Mortgage Interest Restrictions Act 1923, s 10—Rent and Mortgage Interest Restrictions Act 1939, s 3(2)(b). **Palser v Grinling** [1948] 1 1, HL.

Separate charge stipulated for attendance—Increase of Rent and Mortgage Interest (Restrictions) Act 1920, s 12(2)—Rent and Mortgage Interest Restrictions Act 1923, s 10(1). **Artillery Mansions Ltd v Macartney** [1948] 2 875, CA.

Bona fide letting—

Intention to defeat Act—Substantial part of rent applicable to furniture—'Substantial'. **Maclay v Dixon** [1944] 1 22, CA.

Contract—

Reference to rent tribunal. *See* **Rent tribunal** (Reference of contract).

Conversion to unfurnished letting—

Furniture removed piecemeal by tenant and replaced by tenant's own furniture—Assent of landlord on condition landlord's furniture preserved—Whether tenancy converted into unfurnished tenancy. **Klassnick v Allen** [1969] 3 1278, CA.

Invalid notice to quit to furnished sub-tenant expiring at midnight on 25th March—Removal of furniture by tenant earlier on 25th March—Cesser of tenant's interest at midnight on 25th March—Sub-tenant remaining in occupation—Subsequent valid notice to quit given by landlord to sub-tenant—Claims by sub-tenant that tenancy had become an unfurnished tenancy. **Chalcots Developments Ltd v DeGray** [1967] 2 888, CA.

Purchase of furniture by tenant—Effect on tenancy—Estoppel—Conduct of tenant leading to belief letting was unfurnished. **Welch v Nagy** [1949] 2 868, CA.

Tenant possessed of furniture, but willing to accept furnished tenancy to secure premises—Subsequent removal of furniture by landlord and use by tenant of his own—Rent and Mortgage Interest Restrictions Act 1923, s 10(1). **Seabrook v Mervyn** [1947] 1 295, CA.

Extension of protection to furnished tenancies—

Rent payable—Rent of unfurnished flat registered as £400 per annum—Flat let furnished at £20 per week—Furnished letting becoming protected by the Rent Act 1974—Whether registered rent of unfurnished flat applicable to furnished letting—Whether registered rent or contractual rent recoverable by landlord—Rent Act 1974, s 1(1). **Metrobarn Ltd v Gehring** [1976] 3 178, CA.

Recovery of excess rent—

Rent including payment for attendance as well as payment for furniture—Increase of Rent and Mortgage Interest (Restrictions) Act 1920, s 9(1), s 12(2)(i). **Lederer v Parker** [1949] 2 443, CA.

House constructed under building licence. See Housing (House constructed under building licence—Permitted rent).

House or part of a house let—

Application of Rent Restriction Acts—

House not let at date of passing of Act—House let subsequently—Whether Act applicable—Increase of Rent and Mortgage Interest (Restrictions) Act 1920, s 12(2)—Rent and Mortgage Interest Restrictions Act 1923, s 2(1)—Increase of Rent and Mortgage Interest (Restrictions) Act 1938, s 4. **Schaffer v Ross** [1939] 4 363, CA.

House unfit for human habitation—

Notice to execute works—

Person having control—Receipt of rackrent—'Full net annual value' of house—House controlled under Rent Restriction Acts—Housing Act 1936, s 9(4). **Rawlence v Croydon Corpn** [1952] 2 535, CA.

Illegal premium. See Premium, post.

Implied condition of tenancy—

Access by landlord to execute repairs—

Not equivalent to express reservation of right of access and entry. **Mint v Good** [1950] 2 1159, CA.

Increase of rent—

Notice of increase—

Rates—Error in stating amounts of rates in notice—Error in using wrong prescribed form—Signed by landlord's agents without stating that they were his agents—Increase of weekly rent correctly stated—Errors in stating rates de minimis—Admission of facts as to rates given under misunderstanding as water rate not included—Appeal decided on true figures—Rent Restrictions Regulations 1940 (S R & O 1940 No 238), Sch 1—Increase of Rent and Mortgage Interest (Restrictions) Act 1920, s 3(2). **Fredco Estates Ltd v Bryant** [1961] 1 34, CA.

Regulated tenancy. *See* **Regulated tenancy**—Increase of rent, *post*.

Land let together with house—

At date of letting in 1937 house rated at 4 and land not rated—

Land rated at 9 in 1953, rateable value of house not increased—Possession sought by landlord in 1954—Increase of Rent and Mortgage Interest (Restrictions) Act 1920, s 12(2)(iii), (6). **Davies v Gilbert** [1955] 1 415, CA.

Land originally let to tenant together with dwelling-house—

Reversionary estate in land subsequently severed—Rent in respect of land apportioned between two new landlords—Effect of severance of reversion on tenancy—Whether severance terminating existing tenancy and creating two separate tenancies—Rent Act 1968, s 1(2). **Jolley v Buckman** [1973] 3 853, CA.

RENT RESTRICTION (cont)

Landlord—

Mortgagee seeking possession against tenant—

Mortgage expressly excluding power to let premises—Default in payment of instalments due under mortgage—Increase of Rent and Mortgage Interest (Restrictions) Act 1920, s 12(1)(g)—Law of Property Act 1925, s 99(1)—Rent and Mortgage Interest Restrictions (Amendment) Act 1933, s 3(1), Sch 1. **Dudley and District Benefit Building Society v Emerson** [1949] 2 252, CA.

Purchaser of landlord's interest—

Purchaser in receipt of rent pending completion—Whether purchaser himself a landlord—Increase of Rent and Mortgage Interest (Restrictions) Act 1920, s 12(1)(f)(g). **Sheridan v Dickson** [1970] 3 1049, CA.

Letting at less than standard rent—

No clause allowing deduction from standard rent—

Right of landlord to increase rent to standard rent. **Capital and Counties Properties Ltd v Butler** [1944] 2 223, CA.

Long tenancy at low rent—

Continuance on same terms as before—

Licence in 1931 to adapt dwelling-house for multiple occupation—Covenant by tenant to re-instate premises as private dwelling-house at expiration of the term granted by the lease—Tenant of whole house continuing in occupation beyond term date as statutory tenant—Whether tenant's liability to re-instate premises extinguished on his becoming a statutory tenant—Landlord and Tenant Act 1954, s 3(2)(a). **Byrne v Herbert** [1965] 3 705, QBD.

Separate dwelling—

Premises formerly let in two parts—Tenant intending to reconvert to one dwelling—Tenant's furniture in both parts—Active use of one part only by tenant—Whether tenant entitled to protection for whole premises—Whether let as separate dwelling—Landlord and Tenant Act 1954, ss 2(1), 22(3). **Haines v Herbert** [1963] 3 715, CA.

Tenant having purchased remainder of long lease—Tenant in occupation of part of house on expiry of lease—Rest of house sub-let in furnished rooms—Rateable value of whole house above, part occupied by tenant below, rent restrictions limit—Whether part occupied by tenant let as a separate dwelling—Whether tenant protected by virtue of Landlord and Tenant Act 1954, ss 2(1), 22(3). **Crown Lodge (Surbiton) Investments Ltd v Nalecz** [1967] 1 489, CA.

Tenant having purchased remainder of long lease—Tenant in occupation of part of house on expiry of lease—Remainder of house sub-let—Intention of tenant to make home in house—Whether whole house let as separate dwelling—Whether tenant in personal occupation—Landlord and Tenant Act 1954, ss 2(1), 22(3). **Herbert v Byrne** [1964] 1 882, CA.

Mortgaged property—

Loss of protection. *See* **Mortgage** (Possession of mortgaged property—Premises subject to Rent Restrictions Acts).

Unauthorised lease. *See* **Mortgage** (Action by mortgagee for possession—House subject to Rent Restrictions Acts).

Net rent—

Calculation—

Deduction of rates chargeable on the occupier—Increase of Rent and Mortgage Interest (Restrictions) Act 1920, ss 2(1), 12(1)(c). **Strood Estates Co Ltd v Gregory** [1937] 3 656, HL.

Obligation of the tenancy—

Employment—

Undertaking by tenant to remain in employment of third party—Rent and Mortgage Interest Restrictions (Amendment) Act 1933, Sch I, para (a). **R M R Housing Society Ltd v Combs** [1951] 1 16, CA.

Payment to tenant in return for giving up possession—

Statutory tenancy—

Agreement to make—Illegality—Unenforceability—Whether purchaser of landlord's interest in receipt of rent pending completion a landlord—Increase of Rent and Mortgage Interest (Restrictions) Act 1920, ss 12(1)(f)(g), 15(2). **Sheridan v Dickson** [1970] 3 1049, CA.

Tenant to receive sum of money in event of giving up possession on specified date—Contract enforceable by tenant. **Rajbenbach v Mamon** [1955] 1 12, QBD.

Permitted increase in rent—

Improvement of house—

Covenant by landlord to provide services previously supplied voluntarily—Increase of Rent and Mortgage Interest (Restrictions) Act 1920, s 2(3). **Asher v Seaford Court Estates Ltd** [1950] 1 1018, HL.

Replacement of defective floor—Laying of additional concrete bed—Increase of Rent and Mortgage Interest (Restrictions) Act 1920, s 2(1)(a)(5). **Wates v Rowland** [1952] 1 470, CA.

Substitution of modern one-pipe for worn out two-pipe drainage system—Substitution of single large water tank for separate tanks in each flat—Raising of area—Increase of Rent and Mortgage Interest (Restrictions) Act 1920, s 2(1)(a). **Morcom v Campbell-Johnson** [1955] 3 264, CA.

Inclusive rent—

Transfer of liability for rates to tenant—'Corresponding reduction'—Intervening reduction of valuation for rates operating retrospectively from before 1939—Increase of Rent and Mortgage Interest (Restrictions) Act 1920, s 2(1)(b)(3), proviso—Rent and Mortgage Interest Restrictions Act 1939, s 3(1), Sch I. **Regis Property Co Ltd v Redman** [1956] 2 335, CA.

RENT RESTRICTION (cont)

Permitted increase in rent (cont)—

Landlords liable under lease to pay rates—

Statutory tenancy after end of lease—Statutory tenant's liability for increased rent—Increase in respect of rate-increase before statutory tenancy began—Increase of Rent and Mortgage Interest (Restrictions) Act 1920, ss 2(1)(b), (3), 15(1), as amended by Rent and Mortgage Interest Restrictions Act 1939. **Westminster & Kensington Freeholds Ltd v Holme** [1955] 1 581, CA.

Repairs increase—

Declaration that conditions justifying an increase were fulfilled—Certificate of disrepair granted by local authority—Revocation of certificate—Jurisdiction of court to determine whether conditions fulfilled—Housing Repairs and Rents Acts 1954, ss 23(1)(a), 25(1), 26. **Board of Governors of the London Hospital v Jacobs** [1956] 2 603, CA.

Landlord's declaration of having carried out repairs—No application by tenant to county court to determine if carried out—Whether entitled to defend action for increased rent on ground that declaration was fraudulent—Housing Repairs and Rents Act 1954, ss 23(1), 25(1), Sch II, para 4(1). **Lazarus Estates Ltd v Beasley** [1956] 1 341, CA.

Landlord's election not to be liable for internal repairs—Effect on rent increase in case of old control dwelling-house—Increase of Rent and Mortgage Interest (Restrictions) Act 1920, s 2(1)(d)—Housing Repairs and Rents Act 1954, ss 23(1), 30(1)(3). **Jackson v Croucher** [1956] 1 170, CA.

Notice of increase—Calculation not completed in the prescribed form of notice—Validity of notice—Amendment—Housing Repairs and Rents Act 1954, s 25(3)(4)—Housing Repairs (Increase of Rent) Regulations 1954 (S.I. 1954 No 1036), Sch I. **Jackson v Croucher** [1956] 1 170, CA.

Services increase—

Services exemplified—Maintenance of lifts and boilers—Floor coverings to common parts—Housing Repairs and Rents Act 1954, s 40(1)(b). **R v Rent Tribunal for Paddington North and St Marylebone, ex parte Perry** [1955] 3 391, QBD.

Transfer to landlord of liability to repair previously borne by tenant—

Covenant to provide services previously supplied voluntarily—Assessment of increase—Successive tenancies—Increase on successive tenancies in respect of same transfer—Date of assessment—Increase of Rent and Mortgage Interest (Restrictions) Act 1920, s 2(3). **Regis Property Co Ltd v Redman** [1956] 2 335, CA.

Exception for fair wear and tear extinguished—Increase of Rent and Mortgage Interest (Restrictions) Act 1920, s 2(3). **Winchester Court Ltd v Miller** [1944] 2 106, CA.

Transfer of liability previously borne by landlord as tenant—Right of appeal—Increase of Rent and Mortgage Interest (Restrictions) Act 1920, s 2(3)—Rent and Mortgage Interest Restrictions Act 1923, s 11(1). **Beck v Newbold** [1952] 2 412, CA.

Persons protected—

Company—

Limitation of increase of rent—Increase of Rent and Mortgage Interest (Restrictions) Act 1920, s 1. **Carter v S U Carburettor Co Ltd** [1942] 2 228, CA.

Deserted wife in occupation under letting to husband—

Adultery by wife—No step by husband to revoke wife's authority to occupy. **Wabe v Taylor** [1952] 2 420, CA.

Separate actions against husband and wife—No statutory ground pleaded by landlord—Husband's consent to possession. **Middleton v Baldock** [1950] 1 708, CA.

Licensee of tenant—

Letting to husband—Separation of husband and wife—Wife remaining in house—Furniture belonging to husband remaining on the premises—Right of landlord to recover possession—Rent and Mortgage Interest Restrictions (Amendment) Act 1933—Rent and Mortgage Interest Restrictions Act 1939. **Brown v Draper** [1944] 1 246, CA.

Tenant sub-letting premises as furnished letting—

Sub-tenant acquiring statutory security of tenure—Landlord and Tenant (Rent Control) Act 1949, s 11(2)(a). **Francis Jackson Developments Ltd v Hall** [1951] 2 74, CA.

Possession—

Allowing premises to be used for immoral or illegal purposes—

Order for possession suspended indefinitely—Right of landlord to immediate possession—Increase of Rent and Mortgage Interest (Restrictions) Act 1920, s 5(2)—Rent and Mortgage Interest Restrictions (Amendment) Act 1933, s 3(1), Sch I, para (b). **Yates v Morris** [1950] 2 577, CA.

Allowing premises to be used for immoral or illegal purposes—

Tenant convicted of being in possession of drug—Certificate of conviction bearing no reference to premises occupied by tenant—Necessity for landlord to establish link between conviction and premises—Overriding requirement of reasonableness of order for possession—Rent Act 1968, s 10, Sch 3, case 2. **Abrahams v Wilson** [1971] 2 1114, CA.

Alternative accommodation to which tenant had moved—

Oral agreement as to security of tenure—Tenancy in equity. **Kingswood Estate Co Ltd v Anderson** [1962] 3 593, CA.

Breach of covenant—

Assignment by sub-tenant without consent of both superior landlord and tenant—Assignment with consent of tenant only—Enforcement of covenant by superior landlord—Increase of Rent and Mortgage Interest (Restrictions) Act 1920, s 15(3)—Rent and Mortgage Interest Restrictions (Amendment) Act 1933, Sch I, paras (a)(d). **Drive Yourself Hire Co (London) Ltd v Strutt** [1953] 2 1475, CA.

Avowed intention of continuing breach—Keeping dog in flat for medical reasons without landlord's permission—Whether reasonable to make order—Rent and Mortgage Interest Restrictions (Amendment) Act 1933, s 3(1), Sch I. **Bell London & Provincial Properties Ltd v Reuben** [1946] 2 547, CA.

RENT RESTRICTION (cont)

Possession (cont)—

Breach of covenant (cont)—

Breach during contractual tenancy—Failure to remedy before expiration of tenancy—Tenant continuing in possession. **Tideway Investment and Property Holdings Ltd v Wellwood** [1952] 2 514, CA.

Consent of landlord to subletting otherwise in breach of covenant—Acceptance by landlord of rent from head lessee after knowledge of breach—Rent and Mortgage Interest Restrictions (Amendment) Act 1933, Sch 1, para (d). **Hyde v Pimley** [1952] 2 102, CA.

Covenant by tenant to repair—Whether material date at which to determine whether covenant broken was the day of hearing or a previous time—Rent and Mortgage Interest Restrictions (Amendment) Act 1933, s 3(1), Sch 1, para (a). **Brown v Davies** [1957] 3 401, CA.

Covenant not to use premises for any business but only as a private dwelling-house—Tenants taking in paying guests—Reasonableness of order for possession—Rent and Mortgage Interest Restrictions (Amendment) Act 1933, s 3(1)(a), Sch 1, para (a). **Tendler v Sproule** [1947] 1 193, CA.

No subletting allowed—No breach by sub-letting part of premises. **Esdaile v Lewis** [1956] 2 357, CA.

Subletting of whole of premises without consent of landlord—No evidence of there being such subletting at commencement of proceedings—Jurisdiction to make order for possession—Rent and Mortgage Interest Restrictions (Amendment) Act 1933, Sch 1, para (d). **Finkle v Strzelczyk** [1961] 3 409, CA.

Subletting room without consent—Increase of Rent and Mortgage Interest (Restrictions) Act 1920, s 15(3). **Maley v Fearn** [1946] 2 583, CA.

Subletting without consent—Landlord aware of continuing breach—Rent restriction—Sale of premises—Claim for possession against sub-tenant—'Lawfully or unlawfully sub-let'—Increase of Rent and Mortgage Interest (Restrictions) Act 1920, ss 5(5), 15(3)—Rent and Mortgage Interest Restrictions Act 1923, s 7(1). **Norman v Simpson** [1946] 1 74, CA.

Waiver by landlord of breach of covenant against subletting—Date of institution of proceedings material date—Increase of Rent and Mortgage Interest (Restrictions) Act 1920, s 15(3). **Oak Property Co Ltd v Chapman** [1947] 2 1, CA.

Closing order in force in respect of building—

Dwelling-house subject to closing order—Order made under Public Health (London) Act 1936, Sch V, para 8—Housing Act 1936, s 156(1)(e). **Marela Ltd v Machorowski** [1953] 1 960, CA.

Conditional order—

Subsequent conditional postponing order—Conditions ultimately fulfilled—Discharge of original order—Jurisdiction—Increase of Rent and Mortgage Interest (Restrictions) Act 1920, s 5(2)—County Courts Act 1934, s 180(1). **Haymills Houses Ltd v Blake** [1955] 1 592, CA.

Dwelling-house let together with land comprising less than two acres—

Additional adjoining land comprising over three and a half acres in extent let later—Original letting and subsequent letting to expire on the same date—Rateable value of house under £75—Claim for possession by landlord—'Land...let together with a dwelling-house'—Date of letting immaterial—Land comprising over two acres at time of action for possession—Extent of land let at time of claim for possession relevant—Rent and Mortgage Interest Restrictions Act 1939, s 3(1)(3). **Mann v Merrill** [1945] 1 708, CA.

Form of order—

Possession on failure of tenant to fulfil conditions—Tenant authorised to continue breach of covenant and trespass. **Tideway Investment and Property Holdings Ltd v Wellwood** [1952] 2 514, CA.

Hardship—

Availability of defence after Rent Act 1957—Comparative hardship—Finality of decision of county court judge—Jurisdiction to reverse county court decision—Rent and Mortgage Interest Restrictions (Amendment) Act 1933, s 3(1)(a), Sch 1, para (h), proviso—Rent Act 1957, s 26, Sch 6, para 21. **Piper v Harvey** [1958] 1 454, CA.

Burden of proof—Discretion of judge—Rent and Mortgage Interest Restrictions (Amendment) Act 1933, s 3(1), (3), Sch 1, para (h). **Robinson v Donovan** [1946] 2 731, CA.

Comparative hardship—Finality of decision of county court judge—Rent and Mortgage Interest Restrictions (Amendment) Act 1933, Sch 1, para(h), proviso. **Copians v King** [1947] 2 393, CA.

Comparative hardship—Finality of decision of county court judge—Change of circumstances pending appeal—Whether taken into consideration—Rent and Mortgage Interest Restrictions (Amendment) Act 1933, s 3(1), Sch 1, para (h), proviso. **King v Taylor** [1954] 3 373, CA.

Financial position of tenant—Steps taken by tenant to obtain accommodation—Rent and Mortgage Interest Restrictions (Amendment) Act 1933, s 3(1), Sch 1, para (h). **Kelley v Goodwin** [1947] 1 810, CA.

Future hardship—Possession postponed for 4 months—Rent and Mortgage Interest Restrictions (Amendment) Act 1933, Sch 1, para (h), proviso. **Wheller v Evans** [1947] 2 740, CA.

Hardship to landlord's relative—Reasonableness—Consideration of matters material to claims under specific paragraphs—Rent and Mortgage Interest Restrictions (Amendment) Act 1933, s 3(1)(b), Sch 1, para (h), proviso. **Rhodes v Cornford** [1947] 2 601, CA.

RENT RESTRICTION (cont)

Possession (cont)—

Hardship (cont)—

Hardship to persons affected other than landlord or tenant—Rent and Mortgage Interest Restrictions (Amendment) Act 1933, Sch I, para (h), proviso. **Harte v Frampton** [1947] 2 604, CA.

How far question of fact—Matters for consideration—Rent and Mortgage Interest Restrictions (Amendment) Act 1933, s 3(1), Sch I, para (h). **Chandler v Strevett** [1947] 1 164, CA.

Matters to be considered—Sale or storage of furniture—Future hardship—Other accommodation—Whether necessarily protected accommodation—Offer of accommodation in house whereof possession sought—Rent and Mortgage Interest Restrictions (Amendment) Act 1933, s 3(1), Sch I, para (h). **Sims v Wilson** [1946] 2 261, CA.

House required by landlord for employee—

Dismissal of employee—Employee remaining in occupation and paying weekly rent—Claim for possession—New employee in whole-time employment at date of hearing—Date of hearing material—Increase of Rent and Mortgage Interest Restrictions (Amendment) Act 1933, s 3(1)(a), Sch 1, para(g). **Benninga (Mitcham) Ltd v Bijstra** [1945] 2 433, CA.

Employee under contract but unable to commence work owing to illness—Termination of contract shortly after order of county court—Rent and Mortgage Interest Restrictions (Amendment) Act 1933, Sch 1, para(g). **R F Fuggle Ltd v Gadsden** [1948] 2 160, CA.

Employment by former landlord—Occupation continued after death of former landlord under new agreement—Rent and Mortgage Interest Restrictions (Amendment) Act 1933, s 3(1), Sch 1, para(g)(i). **Read v Gordon** [1941] 1 222, CA.

House acquired by new landlord—Tenant continuing in changed employment with former landlord—No right of possession for new landlord's employee—Rent and Mortgage Interest Restrictions (Amendment) Act 1933, Sch 1, para(g). **Duncan v Hay** [1956] 3 555, CA.

Knowledge of tenant—Materiality—Rent and Mortgage Interest Restrictions (Amendment) Act 1933, Sch 1, para(g). **Royal Crown Derby Porcelain Co Ltd v Russell** [1949] 1 749, CA.

No evidence that house let in consequence of particular employment—Rent and Mortgage Interest Restrictions (Amendment) Act 1933, Sch 1, para(g)(i). **Munro v Daw** [1947] 2 360, CA.

Tenancy continued on termination of employment—Rent employment—19620653 Rent increased—Order for possession refused—Counterclaim for overpayment of rent allowed—Counterclaim satisfied and reduced rent subsequently accepted—Rent payable in respect of tenancy less than two-thirds of rateable value—Increase of Rent and Mortgage Interest Restrictions (Amendment) Act 1933, s 3, Sch 1, para(g). **Stone (J & F) Lighting & Radio Ltd v Levitt** [1946] 2 653, HL.

Tenant allowed to remain in possession on termination of employment—Whether fresh tenancy—Rent and Mortgage Interest Restrictions (Amendment) Act 1933, s 3(1)(a), Sch 1, para(g)(i). **Braithwaite & Co Ltd v Elliott** [1946] 2 537, CA.

Termination of employment—Employee in occupation of premises after notice to quit—Acceptance of rent for two weeks—Whether creation of new tenancy—Rent and Mortgage Interest Restrictions (Amendment) Act 1933, Sch 1, para(g)—Rent and Mortgage Interest Restrictions Act 1939, s 3. **Thompsons (Funeral Furnishers) Ltd v Phillips** [1945] 2 49, CA.

House required by landlord for own use—

Claim by joint owners—'Landlord'—Rent and Mortgage Interest Restrictions (Amendment) Act 1933, s 3(1) Sch 1, para (h)—Interpretation Act 1889, s 1. **Baker v Lewis** [1946] 2 592, CA.

Claim by joint owners—'Landlord'—Rent and Mortgage Interest Restrictions (Amendment) Act 1933, s 3(1), Sch I, para (h)—Interpretation Act 1889, s 1. **Baker v Lewis** [1946] 2 592, CA.

Claim by two joint owners—Dwelling-house required for occupation as residence for only one owner—Alternative accommodation—Accommodation for furniture—Rent and Mortgage Interest Restrictions (Amendment) Act 1933, s 3(1),(3), Sch I, para (h)(i). **McIntyre v Hardcastle** [1948] 1 696, CA.

Contract for sale of dwelling-house in June 1939—Letting by vendors in November 1939—Completion of purchase in September 1945—Whether landlord by purchase after 1st September 1939—Rent and Mortgage Interest Restrictions (Amendment) Act 1933, Sch 1, para (h) (as amended by *Rent and Mortgage Interest Restrictions Act 1939, s 3(1) Sch 1*). **Emberson v Robinson** [1953] 2 755, CA.

Death of landlord before execution of order—House devised to daughter—Claim by daughter to enforce order—Rent and Mortgage Interest Restrictions (Amendment) Act 1933, Sch 1, para (h). **Goldthorpe v Bain** [1952] 2 23, CA.

Death of landlord intestate—Widow suing as administratrix and personally—Whether widow landlord by purchase—Rent and Mortgage Interest Restrictions (Amendment) Act 1933, Sch I, para (h). **Littlechild v Holt** [1949] 1 933, CA.

Defendant becoming tenant after purchase—Whether landlord by purchase—Rent and Mortgage Interest Restrictions (Amendment) Act 1933, Sch I, para (h). **Fowle v Bell** [1946] 2 668, CA.

RENT RESTRICTION (cont)

Possession (cont)—

House required by landlord for own use (cont)—

Expiry of contractual tenancy—Notice to quit—Tenant holding over—Acceptance of rent by landlord—Statutory tenancy—No necessity for notice to quit—Increase of Rent and Mortgage Interest (Restrictions) Act 1920, s 15(1)—Rent and Mortgage Interest Restrictions (Amendment) Act 1933, s 3, Sch I, para (h)—Rent and Mortgage Interest Restrictions Act 1939, s 3. **Morrison v Jacobs** [1945] 2 430, CA.

Grantee of head-lease subject to tenant's tenancy—Grantor a purchaser—Rent and Mortgage Interest Restrictions (Amendment) Act 1933, Sch I, para (h). **Lucas v Lineham** [1950] 1 586, CA.

Intention to install married couple as tenants of the upper floor—Married couple looking after landlord in old age—Two households, not a single household—Whether dwelling-house reasonably required by landlord for his own occupation within Rent and Mortgage Interest Restrictions (Amendment) Act 1933, Sch I, para (h). **Richter v Wilson** [1963] 2 335, CA, **Bloomfield v Westley** [1963] 2 337, CA.

Landlord a beneficiary under will whereby house was devised on trust for sale—Trustees permitted beneficiary to use or let house—Beneficiary sole party to letting—Law of Property Act 1925, s 29(2)—Rent and Mortgage Interest Restrictions (Amendment) Act 1933, Sch I, para (h). **Stratford v Syrett** [1957] 3 363, CA.

Landlord becoming landlord by taking lease at a rent—Whether landlord by purchase—Rent and Mortgage Interest Restrictions (Amendment) Act 1933, Sch I, para (h). **Powell v Cleland** [1947] 2 672, CA.

Landlord taking as beneficiary under will as varied by family arrangement—Whether landlord by purchase—Rent Act 1968, s 10, Sch 3, Case 8. **Thomas v Fryer** [1970] 2 1, CA.

Plaintiffs claiming as personal representatives of deceased landlord—One of the plaintiffs deceased landlord's widow—Premises required by widow 'for her own occupation'—No evidence whether widow beneficially entitled to premises—Point not raised by defendant at trial—Whether point may be raised in Court of Appeal—Order by county court judge giving plaintiff possession 'subject to plaintiff allowing defendant a Rent Act protected tenancy' of part of house with joint use of kitchen and out-offices—Order not within power of judge to make—Order for new trial—Rent and Mortgage Interest Restrictions (Amendment) Act 1933, s 3(1), Sch I, para (h). **Sharpe v Nicholls** [1945] 2 55, CA.

Purchase by sub-tenant in 1952—Surrender of tenancy of the whole house against grant of new tenancy of the part of the house occupied by tenant—Whether landlord by purchase—Rent and Mortgage Interest Restrictions (Amendment) Act 1933, Sch I, para (h). **Wright v Walford** [1955] 1 207, CA.

Purchase in 1950—Order for possession of whole house against tenant in 1953—Action for possession against sub-tenant of upper floor—Landlords of sub-tenant, not by purchase, but through order against tenant—Rent and Mortgage Interest Restrictions (Amendment) Act 1933, Sch I, para (h). **Cairns v Piper** [1954] 2 611, CA.

Purchase of house and granting of tenancy to vendor who remained in occupation—Whether landlord by purchase—Rent and Mortgage Interest Restrictions (Amendment) Act 1933, Sch I, para (h). **Newton v Biggs** [1953] 1 99, CA.

Trustees under will enabled to permit beneficiary use of house or to receive net rents and profits—Beneficiary not party to letting of house—Rent and Mortgage Interest Restrictions (Amendment) Act 1933, Sch I, para (h)(i). **Parker v Rosenberg** [1947] 1 87, CA.

Unoccupied house purchased by plaintiff—Subsequent tenancy agreement—Whether plaintiff landlord by purchase—Rent and Mortgage Interest Restrictions (Amendment) Act 1933, Sch I, para (h)—Increase of Rent and Mortgage Interest (Restrictions) Act 1938, Sch II. **Epps v Rothnie** [1946] 1 146, CA.

Use as family home—Landlord himself unable to reside in house—Rent and Mortgage Interest Restrictions (Amendment) Act 1933, Sch I, para (h)(i). **Smith v Penny** [1946] 2 672, CA.

Necessary for convenient occupation—

Cottage in rectory grounds—Claim for possession by rector—Whether necessary for convenient occupation of rectory—Pluralities Act 1838, s 59. **Neale v Jennings** [1946] 1 224, CA.

Non-payment of rent—

Arrears of rent—Landlord's right to forfeiture for non-payment of rent—Reasonableness of order for possession—Arrears due to illness—Form of order—County Courts Act 1959, s 191(1)(a)—Rent and Mortgage Interest Restrictions (Amendment) Act 1933, s 3—Rent Act 1965, s 32. **Wolmer Securities Ltd v Corne** [1966] 2 691, CA.

Arrears paid into court before hearing—Jurisdiction to make order—Reasonableness—Rent and Mortgage Interest Restrictions (Amendment) Act 1933, s 3(1)(a), Sch I, para (a). **Dellenty v Pellow** [1951] 2 716, CA.

Waiver of past irregularities in payment—Rent 'lawfully due'—Tender by tenant before proceedings commenced—Rent and Mortgage Interest Restrictions (Amendment) Act 1933, Sch I, para (a). **Bird v Hildage** [1947] 2 7, CA.

Nuisance or annoyance to adjoining occupiers—

User of premises by tenant for immoral purpose—No evidence from adjoining occupiers of actual nuisance or annoyance—Right to draw inference from user of premises—Rent and Mortgage Interest Restrictions (Amendment) Act 1933, s 3(1)(a), Sch I, para (b). **Frederick Platts Co Ltd v Grigor** [1950] 1 941, CA.

Order—

Application to set aside—Power to make—Application by wife—Matrimonial Homes Act 1967, s 1(1)(5)—Rent Act 1968, s 11(2). **Penn v Dunn** [1970] 2 858, CA.

Order obtained by misrepresentation—

Compensation for damage or loss sustained by tenant—Misrepresentation by landlord that premises required for own occupation—Consent by tenant to order for possession—Immediate sale of premises with vacant possession—Compensation for damage or loss sustained as result of order—Increase of Rent and Mortgage Interest (Restrictions) Act 1920, s 5(6). **Thorne v Smith** [1947] 1 39, CA.

RENT RESTRICTION (cont)

Possession (cont)—

Overcharging on sublet part of premises—

Reasonableness of order for possession—Whether court ought to consider possibility of overcrowding—Rent and Mortgage Interest Restrictions (Amendment) Act 1933, ss 3, 4—Housing Act 1936, s 58, Sch V. **Boulton v Sutherland** [1938] 1 488, CA.

Overcrowding—

Material date for determining whether dwelling-house overcrowded—Housing Act 1936, ss 59(3), 65(1). **Zbytnewski v Broughton** [1956] 3 348, CA.

Premises not in reasonable state of repair—

Certificate of sanitary authority—Whether ipso facto bar to landlord's right of possession—Rent and Mortgage Interest Restrictions (Amendment) Act 1933, s 12, Sch I, para (b). **Peach v Lowe** [1947] 1 441, CA.

Premises unfit for human habitation—

Closing order—Reliance on closing order by landlord claiming possession—Whether landlord entitled to rely on closing order whether premises unfit because of own breach of contractual or statutory duty to maintain premises—Housing Act 1957, s 27(5). **Buswell v Goodwin** [1971] 1 418, CA.

Procedure—

County court to be preferred to High Court—Landlord electing to proceed in High Court—Need for court to be informed of facts—Rent in arrear—Reasonableness of order for possession—Duty of court—Rent and Mortgage Interest Restrictions (Amendment) Act 1933, s 3. **Smith v Poulter** [1947] 1 216, KBD.

Court—Judgment for possession signed in High Court by landlord in default of appearance—Premises to which Rent Acts applied by Rent Act 1965—Invalidity of judgment for recovery of possession for want of determination whether reasonable to give judgment for possession—Jurisdiction of High Court to determine forfeiture of lease—Policy of legislature that proceedings for possession of rent restricted premises should be brought in county court—Rent and Mortgage Interest Restrictions (Amendment) Act 1933, s 3(1)—Rent Act 1965, ss 31, 35(1)(3). **Peachey Property Corp Ltd v Robinson** [1966] 2 981, CA.

Indorsement on writ of summons—Certificate of solicitor or plaintiff's affidavit—Increase in rateable values—New forms of indorsement—Rent Act 1968, s 1, as amended by Counter-Inflation Act 1973, s 14—RSC Ord 6, r 2(1)(c)—RSC Ord 13, r 4(2). **Practice Direction** [1973] 2 336, QBD.

Non-payment of rent—Motion for judgment in default of defence—Arrears of rent and service charges, and mesne profits claimed as well as possession—Leave to enter judgment for possession necessary—Such leave to be obtained on summons, not motion—Order for possession on the motion refused—Rent and Mortgage Interest Restrictions (Amendment) Act 1933, s 3(1)—RSC Ord 19, r 2, 3, 5, 6. **Peachey Property Corp Ltd v Morley** [1967] 3 30, ChD.

Non-payment of rent—Application by summons for leave to enter judgment for possession—Personal service of summons required—Arrears of rent and service charges and mesne profits claimed as well as possession, but judgment in respect of them to be entered without leave—Rent and Mortgage Interest Restrictions (Amendment) Act 1933, s 3(1)—RSC Ord 19, rr 5, 6. **Lircata Properties Ltd v Jones** [1967] 3 386, ChD.

Protected tenancy—

Entitlement to protection—Tenant previously having applied for reduction in rent of furnished letting. **Thomas v Pascall** [1969] 3 937, CA.

Purported surrender of premises—

Dwelling-house left by tenant—Wife remaining in occupation—Tenant's furniture remaining on premises—Purported surrender by tenant of premises by agreement. **Old Gate Estates Ltd v Alexander** [1949] 2 822, CA.

Reasonableness—

Breach of covenant—Installation of gas water heater—Rent and Mortgage Interest Restrictions (Amendment) Act 1933, s 3(1), Sch I, para (a). **Tideway Investment and Property Holdings Ltd v Wellwood** [1952] 2 514, CA.

Landlord giving untrue evidence that accommodation furnished—Whether a proper consideration in deciding reasonableness of order—Rent and Mortgage Interest Restrictions (Amendment) Act 1933, s 3(1). **Yelland v Taylor** [1957] 1 627, CA.

Landlord's only motive financial gain—Landlord offering, as 'suitable alternative accommodation', new house at higher rent, so as to sell old house at greater profit—Rent and Mortgage Interest Restrictions (Amendment) Act 1933, s 3(1). **Cresswell v Hodgson** [1951] 1 710, CA.

Lesser hardship to another tenant of landlord—Rent and Mortgage Interest Restrictions (Amendment) Act 1933, s 3(1). **Hardie v Frediani** [1958] 1 529, CA.

Overcrowding of landlord's family—Order for possession of sub-let portion of house but not of whole house let to tenant—Rent and Mortgage Interest Restrictions (Amendment) Act 1933, ss 3, 4—Housing Act 1936, s 58, Sch V. **Boulton v Sutherland** [1938] 1 488, CA.

Tenant taking paying guests to augment income—Use of gardens as playground for children—Rent and Mortgage Interest Restrictions (Amendment) Act 1933, s 3(1). **Warren v Austen** [1947] 2 185, CA.

Rescission or variation of order for possession made before Act of 1965—

Consent order—Premises brought within Acts by Rent Act 1965—Power to rescind or vary unexecuted order—Discretion of court—Factors to be taken into consideration—Rent Act 1965, s 20(1). **Mouat-Balthasar v Murphy** [1966] 3 477, CA.

Tenant not in personal occupation—

Manager—Tenant or his manager to reside on the premises—Residence by manager. **S L Dando Ltd v Hitchcock** [1954] 2 335, CA.

Occupation as home—House in county and flat in London—Occupation for sleeping five or six times a year. **Beck v Scholz** [1953] 1 814, CA.

Occupation by tenant's parents—Intention to return. **Cove v Flick** [1954] 2 441, CA.

RENT RESTRICTION (cont)

Possession (cont)—

Tenant not in personal occupation (cont)—

Tenant living elsewhere and passing two nights a week in premises. **Langford Property Co Ltd v Athanassoglou** [1948] 2 722, CA.

Tenant unable to live in house owing to illness—Intention to return—House kept in readiness for return—Rent and Mortgage Interest Restrictions (Amendment) Act 1933, s 3(1). **Wigley v Leigh** [1950] 1 73, CA.

Unconditional order—

Subsequent conditional order postponing date for possession and discharging original order on fulfilment of conditions—Increase of Rent and Mortgage Interest (Restrictions) Act 1920, s 5(2). **Payne v Cooper** [1957] 3 335, CA.

Practice—

Separate actions for possession against husband and wife—

Consolidating actions—Joinder of parties in one action. **Middleton v Baldock** [1950] 1 708, CA.

Premises not within Acts—

Dwelling-house owned by housing trust—

Trust for charitable purposes—Funds devoted to provision of housing for the working classes—Housing Act 1936, s 188(1)—Housing Repairs and Rents Act 1954, s 33(1)(9). **Guinness Trust (London Fund) Founded 1890 Registered 1902 v Green** [1955] 2 871, CA.

House originally not within 1939 Act—

Subsequent damage by enemy action—Rateable value reduced—Whether brought within the protection of the Act—New house—Rent and Mortgage Interest Restrictions Act 1939, ss 3(1), 7(1). **Eyre v Haynes** [1946] 1 225, CA.

Lease of parsonage house—

Applicability of Rent Restriction Acts—Pluralities Act 1838, ss 32, 33, 36, 43, 46, 59. **Bishop of Gloucester v Cunington** [1943] 1 61, CA.

Claim to possession for purpose of reletting—Whether Rent Restrictions Acts applicable. **Brandon v Grundy** [1943] 2 208, CA.

Rateable value—

Flats let together and assessed together for rates—Rateable value of each flat ascertained by apportionment—Flats subsequently separately assessed—Such assessment not first assessment—Rent and Mortgage Interest Restrictions Act 1939, ss 3(1), 7(2)(3). **Temple v National Mutual Life Assn of Australasia Ltd** [1955] 2 758, CA.

Rent less than two-thirds of rateable value—

Extrinsic evidence—Tenancy for one year at such weekly rent 'in consideration of the payment by the tenant' of a stated sum, 'and thereafter (shuld the tenant be desirous of continuing his tenancy) on a monthly basis at the said rent'—Tenant remaining in occupation after expiry of year—Notice to quit served after expiry of initial year—Admission of extrinsic evidence to contradict written tenancy agreement—Increase of Rent and Mortgage Interest (Restrictions) Act 1920, s 12(7). **O'Connor v Hume** [1954] 2 301, CA.

Premises within Acts—

Agricultural housing—

Dwelling-house subject to the provisions of the Housing (Rural Workers) Acts—House not included among the dwelling-houses expressly excluded from scope of Rent Restrictions Acts—Rent and Mortgage Interest Restrictions Act 1939, s 3(2)(c). **Black Mill Ltd v Straker** [1949] 2 919, CA.

Boarding-house—

Tenant reserving for own use certain rooms according to requirements—Whether subject to control—Rent and Mortgage Interest Restrictions Act 1939, s 3(3). **Vickery v Martin** [1944] 2 167, CA.

Change of identity—

Premises originally not within 1939 Act—Damage by enemy action—Reduction of rateable value—Rent and Mortgage Interest Restrictions Act 1939, s 3(1)(a). **Hazell, Watson & Viney Ltd v Malvermi** [1953] 2 58, QBD.

Premium—

Advance payment of rent—

Rent paid for three years in advance—Whether payment constituted a premium—Whether tenancy rendered invalid by payment of premium—Landlord and Tenant (Rent Control) Act 1949, s 2. **Grace Rymer Investments Ltd v Waite** [1958] 2 777, CA.

Illegal premium—

Specific performance—Agreement to assign tenancy—Protected tenancy—Agreement conditional on payment of illegal premium—Purchasers agreeing to pay vendor substantial sum for chattels—Chattels worth much less to knowledge of parties—Amount of contract sum in excess of value of chattels an illegal premium—Purchasers refusing to pay contract sum—Purchasers offering to pay reasonable sum for chattels—Whether purchasers entitled to specific performance of agreement on payment of reasonable sum—Rent Act 1968, ss 86, 88, 89, 90(1). **Ailion v Spiekermann** [1976] 1 497, ChD.

Payment—

Third party receiving benefit—Tenant required by landlord, as condition of grant of tenancy, to sell house, owned jointly by him and his wife, to third party at undervalue of £500—Whether sale at undervalue constituted payment of premium—'Pecuniary consideration'—Whether landlord liable to repay £500 to tenant—Landlord and Tenant (Rent Control) Act 1949, ss 2(1)(5), 18(2). **Elmdene Estates Ltd v White** [1960] 1 306, HL.

Payment expressed as consideration for agreement to grant a lease for one year if tenant suitable—

Recital that landlords unwilling to grant a lease within Rent Restrictions Acts—Rent stated in lease less than two-thirds of rateable value—Premium commuted rent—Total rent thus exceeding two-thirds of rateable value. **Samrose Properties Ltd v Gibbard** [1958] 1 502, CA.

RENT RESTRICTION (cont)

Premium (cont)—

Recovery—

Agreement voidable at option of either party—Counterclaim for avoidance of lease and for possession—Premium paid and agreement executed—Landlord and Tenant (Rent Control) Act 1949, s 2(5). **Haberman v Westminster Permanent Building Society** [1950] 2 16, CA.

Consideration nominally paid for goodwill. **Lower v Porter** [1956] 1 150, CA.

Payment by sub-tenant for sub-tenancy—Tenant a statutory tenant—Inability to grant sub-tenancy—Action at common law—Failure of consideration. **Gray v Southouse** [1949] 2 1019, KBD.

Premium paid by third party—Period of limitation for recovery—Increase of Rent and Mortgage Interest (Restrictions) Act 1920, s 14(1)—Rent and Mortgage Interest Restrictions Act 1923, s 8(2)—Landlord and Tenant (Rent Control) Act 1949, s 2(5). **Temple v Lewis** [1953] 2 1130, CA.

Requirement of payment as condition of grant of lease—

Payment not required by landlord—Agreement between landlord and outgoing tenant for surrender of lease and grant of new lease to incoming tenant—Requirement of payment of premium by outgoing tenant from incoming tenant—Whether illegal premium—Rent Act 1968, s 85. **Zimmerman v Grossman** [1971] 1 363, CA.

Requirement or receipt by any person of premium as condition of or in connection with grant of protected tenancy—Any person—Person other than landlord—Outgoing tenant—Tenant requiring and receiving premium from new tenant as condition of procuring grant by landlord of tenancy to new tenant—Whether premium required and received by outgoing tenant illegal—Rent Act 1968, s 85(1)(2). **Farrell v Alexander** [1976] 2 721, HL.

Sum paid as commuted rent—Landlord and Tenant (Rent Control) Act 1949, ss 2(1)(5), 18(2). **Woods v Wise** [1955] 1 767, CA.

Requirement of premium as condition of assignment of tenancy—

Proposed assignment—Agreement to assign tenancy in consideration of payment of premium—Landlord requiring surrender of tenancy in exercise of power contained in lease—Landlord agreeing to grant new lease to proposed assignee—Premium paid to outgoing tenant following grant of new tenancy—Whether premium recoverable as having been paid as a condition of or in connection with assignment of tenancy—Rent Act 1968, s 86(1)(2). **Farrell v Alexander** [1976] 1 129, CA.

Protected tenancy—

Furnished premises. *See* **Furnished letting**—Extension of protection to furnished tenancies, *ante*.

Loss through fraudulent misrepresentation. *See* **Misrepresentation** (Fraudulent misrepresentation—Loss of protected tenancy).

Rateable value—

Apportionment of rateable value—

Question arising in proceedings whether dwelling-house within limits of rateable value—Presumption that house within limits unless contrary shown—Meaning of 'proceedings'—Question arising as to proper apportionment—Determination by county court—Rent officer—Determination of fair rent—Ground floor flat—Flat not separately rated—Rateable value of whole house exceeding limits—Rent officer deciding that on apportionment of rateable value flat within limits—Landlord not objecting—Whether question as to rateable value arising in 'proceedings'—Whether 'question arising' as to proper apportionment of rateable value requiring reference to county court—Whether rent officer having power to determine apportionment so as to establish own jurisdiction—Rent Act 1968, ss 1(3), 6(2). **R v Westminster (City) London Borough Rent Officer, ex parte Rendall** [1973] 3 119, CA.

Appropriate day—

Refund of rates in respect of period within which appropriate day fell—Refund calculated on basis of rateable value below £400 (Greater London)—Valuation list for relevant period showing rateable value in excess of £400—Whether protected tenancy—Rating and Valuation Act 1961, s 17—Rent Act 1965, s 43(4). **Rodwell v Gwynne Trusts Ltd** [1970] 1 314, HL.

Division into two dwelling-houses without structural alteration—

Rateable value of combined houses above limit prescribed for control—Rent and Mortgage Interest Restrictions Act 1923, s 2—Rent and Mortgage Interest Restrictions (Amendment) Act 1933, s 2. **Fox v Marshall** [1938] 4 773, CA.

Evidence—

Neighbouring premises. **Oscroft v Benabo** [1967] 2 548, CA.

Recovery of overpaid rent—

Bankruptcy of landlord—

Right of tenant to deduct amount of rent overpaid from rent payable to trustee. **Hole v Cuzen** [1953] 1 87, CA.

Overpayment by tenant—

Right of tenant's personal representative to recovery—Increase of Rent and Mortgage Interest (Restrictions) Act 1920, s 14(1). **Dean v Wiesengrund** [1955] 2 432, CA.

Time of application—

Tenant no longer tenant at time of application—Increase of Rent and Mortgage Interest (Restrictions) Act 1920, s 9(1). **Riordan v Minchin** [1948] 2 633, CA.

Regulated tenancy—

Increase of rent—

Notice of increase—Date from which increase to take effect—Increase in 'rent payable for any statutory period'—Rent payable on specified date for each rental period—Notice specifying increase to take effect during course of rental period and for apportioned part of period—Validity—Whether notice must specify date on which rent for relevant period payable as date from which increase to take effect—Rent Act 1968, s 22(2)(b). **Avenue Properties (St John's Wood) Ltd v Aisinzon** [1976] 2 177, CA.

RENT RESTRICTION (cont)**Rent—****Determination of fair rent—**

Application—Change in condition of dwelling-house—Application before expiry of three years from date of registration of rent—Improvement effected by landlord—Application by landlord for mid-term review—Whether rent officer in determining fair rent to have regard to all circumstances of dwelling-house or only to change in condition due to improvement—Rent Act 1968, ss 44(3), 46(1). **London Housing and Commercial Properties v Cowan** [1976] 2 385, QBD.

Jurisdiction—Preliminary issue—County court—Reference to county court—Status of applicant—Landlord contending applicant not tenant of house—Jurisdiction of rent officer or rent assessment committee to consider and determine issue—Whether proper course to leave parties to refer issue to county court—Rent Act 1968, s 105(1). **R v Rent Officer for the London Borough of Brent, ex parte Ganatra** [1976] 1 849, QBD.

Objection—Objection to rent determined by rent officer—Reference to rent assessment committee—Withdrawal of objection—Withdrawal after reference to committee and before hearing—Effect—Jurisdiction of committee to proceed with hearing and to determine fair rent—Rent Act 1968, Sch 6, paras 5, 6(1), 9(1). **Hanson v London Rent Assessment Committee** [1976] 1 245, QBD.

Rent assessment committee—Jurisdiction—Appeal—Mid-term review—Improvement effected by landlord—Landlord applying for mid-term review—Rent officer reassessing rent—Landlord appealing against reassessment to committee—Whether committee having jurisdiction to hold that improvement insufficient to warrant mid-term review—Whether committee entitled to determine fair rent as original rent registered—Rent Act 1968, s 44(3), Sch 6, para 9. **London Housing and Commercial Properties v Cowan** [1976] 2 385, QBD.

Rent assessment committee—Majority decision—Whether unanimous decision necessary. *See Tribunal* (Decision—Majority decision).

Exclusive use of part of house given in return for services—

No money rent or monetary quantification of services—Whether performance of services constituting rent—Whether tenancy or licence to occupy—Whether protected tenancy. **Barnes v Barratt** [1970] 2 483, CA.

Registered rent—

Reconsideration—Applicant—Person gaining freehold after expiration of lease—No lease at time of application—Whether qualified to apply—Rent Act 1968, ss 75(1), 84(1). **R v East London Rent Tribunal, ex parte Schryer** [1969] 3 447, QBD.

Rent in form of services—

Dwelling-house let to caretaker of landlord's premises—Wages deducted from rent—Rent paid still exceeding two-thirds of rateable value—Subsequent extinction of rent by increase of wages. **Montague v Browning** [1954] 2 601, CA.

Suspension of obligation to pay—

Premises not in reasonable state of repair—Certificate of sanitary authority—Whether obligation to pay suspended in toto—Rent Restrictions (Notice of Increase) Act 1923, s 3(3). **Peach v Lowe** [1947] 1 441, CA.

Total of rent and rates paid by tenant—

Agreement under Poor Rate Assessment and Collection Act 1869, s 3, by landlords with rating authority to be liable for rates—Increase of Rent and Mortgage Interest (Restrictions) Act 1920, s 12(7)—Landlord and Tenant (Rent Control) Act 1949, s 2(1). **Sidney Trading Co Ltd v Finsbury Borough Council** [1952] 1 460, QBD.

Rent assessment committee—

Determination of fair rent. *See* Rent—Determination of fair rent—Rent assessment committee, *ante*.

Rent limit—**Adjustment for repairs—**

Appropriate factor—Basis of determination—Whether determination a decision of fact—Rent Act 1957, s 1(1), Sch 1, Part I, para 1(2)(3). **Regis Property Co Ltd v Dudley** [1958] 3 491, HL.

Reasonable charge for services provided by landlord—

Depreciation of plant—Profit on services—Rent Act 1957, s 1(1)(b). **Regis Property Co Ltd v Dudley** [1958] 1 510, CA.

Rent tribunal. *See* Rent tribunal.**Requisitioned property—****No tenancy created in favour of occupant—**

Occupant not protected by Rent Restriction Acts. **Southgate Borough Council v Watson** [1944] 1 603, CA.

Separate dwelling—**Additional accommodation in same house—**

Separate tenancy agreements—Intention of parties—Treatment of both tenancies as one letting—Increase of Rent and Mortgage Interest (Restrictions) Act 1920, s 12(2). **Wimbush v Cibula** [1949] 2 432, CA.

Common use of scullery between tenant and sub-tenant—

Proceedings for possession commenced by landlord before June 2, 1949—Effect of Landlord and Tenant (Rent Control) Act 1949, ss 9, 10. **Hutchinson v Jauncey** [1950] 1 165, CA.

Exclusive letting of room with user, in common with other tenants, of other rooms, including kitchen—

Whether letting a separate dwelling—Rent and Mortgage Interest Restrictions (Amendment) Act 1933, s 16(1). **Llewellyn v Hinson** [1948] 2 95, CA.

House let for the purpose of multiple residential occupation—

Tenant subletting rooms in house for separate occupation—Tenant not himself occupying any part of house as his residence—Whether singular word 'dwelling' including plural—Whether house 'let as a ... dwelling'—Rent Act 1968, s 1(1). **Horford Investments Ltd v Lambert** [1974] 1 131, CA.

RENT RESTRICTION (cont)**Separate dwelling (cont)—****Letting of part of flat—**

Use of the kitchen and the bathroom together with the employees of the landlord—Understanding that employees shall use bathroom and kitchen for taking fresh water and washing purposes—Increase of Rent and Mortgage Interest (Restrictions) Act 1920, s 12(2). **Marsh Ltd v Cooper** [1969] 2 498, CA.

Letting of rooms—

Letting of rooms with licence to use kitchen—Declaration in agreement that tenancy to be within Rent Acts. **Roger v Hyde** [1951] 2 79, CA.

Use of extra bedroom in common with landlord—Increase of Rent and Mortgage Interest (Restrictions) Act 1920, s 12(2). **Goodrich v Paisner** [1956] 2 176, HL.

Part of a separate dwelling-house—

Flat let as residence a separate dwelling-house—Additional room let to tenant of flat as servant's room—Distinct contracts of letting and different dates, terms and conditions—Single room not part of the dwelling-house that the flat constituted for the purposes of the Rent Acts. **Metropolitan Properties Co (FGC) Ltd v Bader** [1968] 1 536, CA.

Parts of dwelling-house sublet by tenant—

Different parts sublet from time to time—Occupation by tenant of parts not sublet. **Berkeley v Papadoyannis** [1954] 2 409, CA.

Rooms in premises adjoining hotel—

Rooms let for extra bedroom accommodation for hotel—Rooms usually occupied by hotel guests and on occasions by tenant's family and staff—Whether rooms 'separate dwelling'—Increase of Rent and Mortgage Interest (Restrictions) Act 1920, s 12(2). **Curl v Angelo** [1948] 2 189, CA.

Two floors sublet by contractual tenant—

Not 'self-contained' flats—Expiration of contractual tenancy—Claim by landlord for possession of floors sublet—Increase of Rent and Mortgage Interest (Restrictions) Act 1920, s 15(1). **Crowhurst v Maidment** [1952] 2 808, CA.

Two self-contained flats—

Tenant of house at all times resident in lower flat—Upper flat sub-let—Acquirement of freehold of house by former sub-tenant of upper flat—Recovery of possession. **Murgatroyd v Tresarden** [1946] 2 723, CA.

Unfurnished tenancy—

Subletting of one room, furnished, with use, in common with tenant, of kitchen—Rent and Mortgage Interest Restrictions (Amendment) Act 1933, s 16(1), Sch I, para (d)—Rent and Mortgage Interest Restrictions Act 1939, s 3(2)(b). **Baker v Turner** [1950] 1 834, HL.

Shared accommodation—**Kitchen shared by two tenants—**

One tenant landlord's son—Son becoming landlord—Right to possession against other tenant—Landlord and Tenant (Rent Control) Act 1949, s 8(1)(b). **Tovey v Tyack** [1954] 3 210, CA.

Premises vacated by one tenant—Right of landlord to possession as against remaining tenant—Landlord and Tenant (Rent Control) Act 1949, s 8(1)(b). **Isaacs v Titus** [1954] 1 470, CA. **Lockwood v Lowe** (1953) [1954] 1 472, CA.

Living rooms let to tenant—

Joint use of bathroom—Let as separate dwelling. **Cole v Harris** [1945] 2 146, CA.

Joint use of bathroom, boxroom, wc and kitchen—Not let as separate dwelling. **Keynon v Walker** [1946] 2 595, CA.

Sole use of one living room—

Scullery shared—Right to use scullery for cooking—Increase of Rent and Mortgage Interest (Restrictions) Act 1920, s 12(2). **Fredco Estates Ltd v Bryant** [1961] 1 34, CA.

Sole use of three unfurnished rooms and joint use of other rooms—

Part of house let as a separate dwelling. **Krauss v Boyne** [1946] 1 543, QBD.

Sole use of two rooms—

Kitchen and bathroom shared with landlord's employees—Employees to use kitchen and bathroom for taking water and washing purposes only—Whether dwelling-house. **Marsh Ltd v Cooper** [1969] 2 498, CA.

Sole use of unfurnished living rooms—

Joint use of bathroom and kitchen—Sharing house. **Neale v Del Soto** [1945] 1 191, CA.

Sole use of unfurnished rooms—

Sharing of other living rooms—Right to draw water and boil clothes in kitchen—Increase of Rent and Mortgage Interest (Restrictions) Act 1920, s 12(2). **Hayward v Marshall** [1952] 1 663, CA.

Standard rent—**Application to ascertain—**

Flat let unfurnished during currency of furnished letting—Subsequent unfurnished letting at increased rent—Whether standard rent to be ascertained in relation to first or second unfurnished letting—Increase of Rent and Mortgage Interest (Restrictions) Act 1920, s 12(1)(a). **Anspach v Charlton Steam Shipping Co Ltd** [1955] 1 693, CA.

Previous judgment—Previous judgment for possession and recovery of arrears of rent at a rate higher than the standard rent—No estoppel—Illegality—Rent and Mortgage Restrictions Act 1923, s 11. **Griffiths v Davies** [1943] 2 209, CA.

Apportionment—

Application by tenant of whole property—Property as a whole outside Rent Restrictions Acts—Property comprising principal dwelling-house and a lodge—Increase of Rent and Mortgage Interest (Restrictions) Act 1920, s 12(3). **Amphlett v Dorrell** [1948] 2 674, CA.

County court decision final and conclusive—Increase of Rent and Mortgage Interest (Restrictions) Act 1920, s 12(3)—Increase of Rent and Mortgage Interest (Restrictions) Act 1938, s 5. **Gover v Field** [1944] 1 151, 417, CA.

RENT RESTRICTION (cont)

Standard rent (cont)—

Apportionment (cont)—

Exclusive use of three rooms with use in common of combined bathroom and lavatory—Three rooms 'part of a house let as a separate dwelling'—Whole house itself not controlled—No apportionment of standard rent—Increase of Rent and Mortgage Interest (Restrictions) Act 1920, ss 12(1), (2), (3), 14(1)—Rent and Mortgage Interest Restrictions (Amendment) Act 1933, s 16(1)—Increase of Rent and Mortgage Interest (Restrictions) Act 1938, ss 5, 7(6)—Rent and Mortgage Interest Restrictions Act 1939, ss 3, 7(1). *Cole v Harris* [1945] 2 146, CA.

Flat let with another flat—Whole dwelling outside Rent Acts—Flat first let as separate dwelling subsequently—Increase of Rent and Mortgage Interest (Restrictions) Act 1920, s 12(1), (3). *Capital and Provincial Property Trust Ltd v Rice* [1951] 2 600, HL.

House converted into flats—Whole house outside Rent Acts—Increase of Rent and Mortgage Interest (Restrictions) Act 1920, s 12(3). *Lindop v Quaipe* [1949] 1 456, CA.

Let—First let—Flat originally in one lease of three separate premises—Subsequent separate letting of flat—Increase of Rent and Mortgage Interest (Restrictions) Act 1920, s 12(1)(3). *Upsons Ltd v Herne* [1946] 2 309, CA.

Loss of identity of original dwelling-house—Substantial structural alterations—Alterations made to enable house to be let as two separate units—Separate gas and electricity meters fitted—Sink installed—Gas cooker substituted for gas fire—Increase of Rent and Mortgage Interest (Restrictions) Act 1920, s 12(3)(as amended by Rent and Mortgage Interest Restrictions (Amendment) Act 1933, s 17(2)). *Monk v Murphy* [1949] 1 786, CA.

Period of decontrol—Conversion of premises—House let for dwelling-house purposes from 1929 to 1935, but for business purposes from 1935 to 1946—Subsequent conversion into residential flats—Increase of Rent and Mortgage Interest (Restrictions) Act 1920, s 12(1)(a) (as amended by Rent and Mortgage Interest Restrictions Act 1939, s 3(1), Sch I), s 12(3). *Mitchell v Barnes* [1949] 2 719, CA.

Refusal to determine application—Building comprising two flats—Letting after 1st September 1939—Standard rent fixed by rent tribunal—Alleged prior letting as one house before 1st September 1939—Subsequent application for apportionment—Duty to hear and determine application—Increase of Rent and Mortgage Interest (Restrictions) Act 1920, s 12(3)—Landlord and Tenant (Rent Control) Act 1949, s 1(1). *R v Judge Pugh, ex parte Graham* [1951] 2 307, KBD.

Sole use of two unfurnished rooms and joint use of other rooms—'Part of a house let as a separate dwelling'—Increase of Rent and Mortgage Interest (Restrictions) Act 1920, s 12(2), (3), (8)—Rent and Mortgage Interest Restrictions (Amendment) Act 1933, s 16(1). *Neale v Del Soto* [1945] 1 191, CA.

Contractual tenancy at rent lower than standard rent—

Termination of contractual tenancy—Right of landlord to increase rent to amount of standard rent—Estoppel—Increase of Rent and Mortgage Interest (Restrictions) Act 1920, s 15(1). *Dean v Bruce* [1951] 2 926, CA.

Cottage formerly decontrolled—

Not let on 1st September 1939—Recontrolled by Rent and Mortgage Interest Restrictions Act 1939. *Davies v Warwick* [1943] 1 309, CA.

Dwelling-house let in separate parts to two tenants—

Subsequently whole house let to one tenant—Whether house originally let as a complete dwelling—Increase of Rent and Mortgage Interest (Restrictions) Act 1920, s 12(1)(a)—Rent and Mortgage Interest Restrictions (Amendment) Act 1933, s 16—Rent and Mortgage Interest Restrictions Act 1939, ss 3, 7(1). *Vaughan v Shaw* [1945] 2 52, CA.

Dwelling-house owner-occupied from 1930 until 1936—

Let before 1930 at 14s per week and after 1936 at 35s per week—Owner's occupation not registered—Whether house controlled immediately before the Act of 1938—Rent and Mortgage Interest Restrictions (Amendment) Act 1933, s 1(2). *Norton v White* [1949] 1 925, CA.

First let—

Dwelling-house first let furnished—Subsequently let unfurnished—Increase of Rent and Mortgage Interest (Restrictions) Act 1920, s 12(1)(a)(2)(i). *Signy v Abbey National Building Society* [1944] 1 448, CA.

House within Housing (Rural Workers) Acts first let at rent of 7s. 6d. a week imposed under those Acts—House later freed from Housing (Rural Workers) Acts and let at rent of 17s. 6d. a week—Increase of Rent and Mortgage Interest (Restrictions) Act 1920, s 12(1)(a). *Roberts v Jones* [1946] 2 678, CA.

House divided into two flats—

No evidence of letting of house or flats before 1928—Lower flat let in 1928 for one year at 25s. a week—Lower flat again let in 1937 at 17s. 6d. a week—Increase of Rent and Mortgage Interest (Restrictions) Act 1920, s 12(1)(a). *Stirling v Gilbert* [1952] 2 153, CA.

House first let furnished—

Purchase of furniture by tenant during occupation—Subsequent letting furnished—Increase of Rent and Mortgage Interest (Restrictions) Act 1920, s 12(1). *Stagg v Brickett* [1951] 1 152, CA.

Lease reserving rent of £200—

Agreement of same date reducing rent to £150. *White v Richmond Court Ltd* [1944] 1 689, CA.

Letting to company with same directors and shareholders as lessor for short period at high rent—

No intention to occupy—Increase of Rent and Mortgage Interest (Restrictions) Act 1920, s 12(1)(a)—Rent and Mortgage Interest Restrictions Act 1939, Sch I. *Conqueror Property Trust Ltd v Mayor, Aldermen and Burgesses of the Borough of Barnes* [1944] 1 34, KBD.

New lease granted under Landlord and Tenant Act 1927—

Power of tribunal to fix rent above standard rent. *Rose v Hurst* [1949] 2 24, CA.

RENT RESTRICTION (cont)**Standard rent (cont)—**

No evidence of letting on or before 1st September 1939—

Evidence of letting in 1944—Prima facie evidence of standard rent—Increase of Rent and Mortgage Interest (Restrictions) Act 1920, ss 12(1)(a), 14(1) (as amended by Rent and Mortgage Interest Restrictions Act 1939, s 3(1), Sch I). **Keane v Clarke** [1951] 2 187, CA.

Premises let as dwelling-house in 1940—

Same premises let in 1938, at high rent, as business offices with licence for tenant to sleep on premises—Claim by landlord to fix standard rent by reference to 1938 letting—'Dwelling-house'—1938 letting not as a dwelling-house—Increase of Rent and Mortgage Interest (Restrictions) Act 1920, s 12(1)(a)—Rent and Mortgage Interest Restrictions Act 1939. **Macmillan and Co Ltd v Rees** [1946] 1 675, CA.

Premises let at progressive rent—

Rent payable on 1st September 1939 and for five years thereafter less than two-thirds rateable value—Maximum rent more than two-thirds—Application of Rent Acts—Increase of Rent and Mortgage Interest (Restrictions) Act 1920 (as amended by Rent and Mortgage Interest Restrictions Act 1939, Sch I), ss 12(1)(a), (7). **Woozley v Woodall Smith** [1949] 2 1055, CA.

Premises let under headlease at £300 per annum—

Sub-let in breach of covenant at £225—Waiver of breach of covenant—Increase of Rent and Mortgage Interest (Restrictions) Act 1920, s 12(1)(a). **Edgware Estates Ltd v Coblentz** [1949] 2 526, CA.

Premises let with dwelling-house—

House let on 1st September 1939—Subsequent letting of house and separate garage—Treatment of garage as part of dwelling-house—Rent and Mortgage Interest Restrictions Act 1939, s 3(3). **Langford Property Co Ltd v Batten** [1950] 2 1079, HL.

Premises originally let for business purposes—

Change of user—Knowledge of landlord's rent collector—Implication of landlord's consent—Later letting at higher rent—Determination of standard rent under Rent and Mortgage Interest Restrictions (Amendment) Act 1933, s 6—Increase of Rent and Mortgage Interest (Restrictions) Act 1920, s 12(1)(a). **Court v Robinson** [1951] 1 209, CA.

Previous tenancy held to be outside Rent Acts—

Whether decision binding on subsequent tenant—Rent and Mortgage Interest Restrictions Act 1923, s 11(1). **Lazarus-Barlow v Regent Estates Co Ltd** [1949] 2 118, CA.

Rent—

Lease of flat—Agreement in contemporaneous document to pay annual sums for decorative alterations and cost of management—Increase of Rent and Mortgage Interest (Restrictions) Act 1920, s 12(1)(a) (as amended by Rent and Mortgage Interest Restrictions Act 1939, s 3(1), Sch I). **Alliance Property Co Ltd v Shaffer** [1949] 1 312, CA.

Payment for provision of fittings and services—Inclusion—Permitted increase—Transfer of burdens—Landlord's covenant for services, etc, in former agreement not included in later agreement—Increase of Rent and Mortgage Interest (Restrictions) Act 1920, s 2(3), ss 12(1)(a). **Property Holding Co Ltd v Clark** [1948] 1 165, CA.

Rent reduced during hostilities—

Progressive rent—Increase of Rent and Mortgage Interest (Restrictions) Act 1920, s 12(1)—Rent and Mortgage Interest Restrictions Act 1939. **Tedman v Whicker** [1944] 1 26, CA.

Statement in rent book—

First letting of part of house—No apportionment—Whether offence if standard rent not stated. **Austin v Greengrass** [1944] 1 456, KBD.

Tenancy agreement allowing deduction from contractual rent during temporary period—

Agreement determined by notice—Statutory tenancy—Incorporation of provision for reduction as term of statutory tenancy—Whether deduction permissible in fixing standard rent—Progressive rent—Increase of Rent and Mortgage Interest (Restrictions) Act 1920, ss 12, 15. **Bryanston Properties Co Ltd v Edwards** [1943] 2 646, CA.

Tenancy at will—

Rents of similar houses—Whether rent of similar houses can be taken into consideration—Rent and Mortgage Interest Restrictions Act 1923, s 11—Rent and Mortgage Interest Restrictions (Amendment) Act 1933, s 6. **Chamberlain v Farr** [1942] 2 567, CA.

Uncontrolled dwelling-house let at uneconomic rent—

Subsequent letting when controlled at increased rent—Increase of Rent and Mortgage Interest (Restrictions) Act 1920, s 12(1)(a) (as amended by Rent and Mortgage Interest Restrictions Act 1939, Sch I). **Insall v Nottingham Corp** [1948] 2 232, CA.

Statutory tenant—

Acquisition of possessory title against mesne landlord—

Effect on rights against head landlord—Determination of head lease—Defendant a sub-tenant—Defendant becoming a statutory tenant—Defendant subsequently acquiring possessory title against mesne landlord following non-payment of rent for 12 year period—Defendant remaining in occupation after determination of head lease—Whether defendant entitled to rights of statutory tenant against head landlord. **Jessamine Investment Co v Schwartz** [1976] 3 521, CA.

Conversion into contractual tenant—

Acceptance of new rent book containing new conditions of tenancy. **The Bungalows (Maidenhead) Ltd v Mason** [1954] 1 1002, CA.

Estate or interest—

Insufficient to maintain action for trespass—Non-occupying tenant—Licence to defendant to occupy—Defendant's occupation not to preserve premises for tenant's return—Increase of Rent and Mortgage Interest (Restrictions) Act 1920, s 15(1). **Thompson v Ward** [1953] 1 1169, CA.

None. **Harrington v Croydon Corp** [1967] 3 929, CA.

Right of occupation—No legal estate. **Solomon v Orwell** [1954] 1 874, CA.

RENT RESTRICTION (cont)**Statutory tenant (cont)—****Forfeiture for non-occupation—**

Lease of shop and dwelling-house—Dwelling-house sub-let—Expiration of lease—Tenant not then occupying dwelling-house—Subsequent resumption of possession—Increase of Rent and Mortgage Interest (Restrictions) Act 1920, s 15(1). **John M Brown Ltd v Bestwick** [1950] 2 338, CA.

Premises left owing to disrepair—Animus revertendi. **Bushford v Falco** [1954] 1 957, CA.

Tenant a patient in mental hospital for six years—No intention to abandon occupation—Daughter in occupation, with tenant's furniture—Tenant's condition improved, and becoming a voluntary patient—Slight possibility of return to premises—Whether sufficient hope and possibility of return to retain status of statutory tenant. **Tickner v Hearn** [1960] 1 65, CA.

Tenant leaving with intent to live elsewhere for three years—Animus revertendi. **Dixon v Tommis** [1952] 1 725, CA.

Tenant serving time of imprisonment—Animus possidendi—Corpus possessionis. **Brown v Brash** [1948] 1 922, CA.

Holding over—

Contractual tenant holding over—Whether statutory tenant. **Murray, Bull & Co Ltd v Murray** [1952] 2 1079, QBD.

Licensee—

Employee of company remaining, after his retirement, in occupation of flat belonging to company. **Murray, Bull & Co Ltd v Murray** [1952] 2 1079, QBD.

Occupation on behalf of tenant by mistress—Mistress having borne children to statutory tenant—Tenant leaving premises permanently—Mistress remaining in occupation—Tenant executing surrender—Whether mistress continuing to occupy premises on behalf of tenant—Whether mistress entitled to rely on statutory tenancy—Rent Act 1968, s 3(1). **Smith (Colin) Music Ltd v Ridge** [1975] 1 290, CA.

Sub-tenancy—**Cottage and ten acres with rateable value within Rent Restrictions Acts—**

Cottage and ten acres part of farm of seventy-four acres (including farmhouse) let to tenant—Surrender of tenancy of farm—Whether farm was 'premises' within Housing Repairs and Rents Act 1954, s 41. **Hobhouse v Wall** [1963] 1 701, CA.

Determination of superior tenancy—

Sub-tenancy of dwelling-house forming part of premises let as a whole on superior lettings—Premises—Meaning—Buildings used for residential purposes—Farm—Farm buildings including cottage—Tenant of farm subletting cottage—Sub-tenancy protected as between tenant and sub-tenant—Termination of tenancy of farm—Whether farm 'premises' of which cottage forming part—Rent Act 1968, s 18(5). **Maunsell v Olins** [1975] 1 16, HL.

Dwelling-house let at rent less than two-thirds of rateable value—

Subletting at rent more than two-thirds of rateable value—Expiry of head-lease—Right of landlords to possession—Increase of Rent and Mortgage Interest (Restrictions) Act 1920, ss 12(7), 15(3). **Knightsbridge Estates Trust Ltd v Deeley** [1950] 1 577, CA.

Exclusive use of part of flat—

Kitchen shared with tenant—Order for possession against tenant—Landlord's right to possession against sub-tenant—Increase of Rent and Mortgage Interest (Restrictions) Act 1920, s 15(3)—Landlord and Tenant (Rent Control) Act 1949, s 8(1). **Stanley v Compton** [1951] 1 859, CA.

Exclusive use of part of house—

Kitchen and other essential parts of house shared with tenant—Surrender of tenancy by tenant—Landlord's right to possession against sub-tenant—Landlord and Tenant (Rent Control) Act 1949, s 9. **Shackleton v Greenhalgh** [1950] 2 1223, CA.

Letting—

Letting to intermediate landlord outside Acts as agricultural holding let to farmer—Sub-tenancy of cottage on farm—Cottage occupied as private dwelling, not in connection with farm work—Whether sub-tenant protected by Rent Restrictions Acts—Increase of Rent and Mortgage Interest (Restrictions) Act 1920, s 12(2), proviso (iii). **Critchley v Clifford** [1961] 3 288, CA.

Paddock outside Rent Acts—

Subletting with part of tenant's own dwelling-house subject to Acts—Right to landlord to recover possession of paddock—Rent and Mortgage Interest Restrictions (Amendment) Act 1933, s 3(1)—Increase of Rent and Mortgage Interest (Restrictions) Act 1920, s 15(3). **Knight v Olive** [1954] 1 701, CA.

Premises decontrolled—

Possession of sublet part—Whether landlord entitled to possession of sublet part with rateable value below £40—Increase of Rent and Mortgage Interest (Restrictions) Act 1920, s 15(3)—Housing Repairs and Rents Act 1954, s 41—Rent Act 1957, s 11(1), (3), Sch 4—Landlord and Tenant (Temporary Provisions) Act 1958, s 3(1). **Legge v Matthews** [1960] 1 595, CA.

Unlawful sub-tenant of part of premises with rateable value below £40—Sub-tenancy becoming lawful by waiver of breach by landlord in 1958—Whether landlord entitled to recover possession from sub-tenant—Increase of Rent and Mortgage Interest (Restrictions) Act 1920, s 15(3). **Muspratt v Johnson** [1963] 2 339, CA.

Premises outside Rent Restrictions Acts—

Notional separate subletting of part within Rent Restrictions Acts—Whether landlord entitled to recover possession—Increase of Rent and Mortgage Interest (Restrictions) Act 1920, s 15(3)—Housing Repairs and Rents Act 1954, s 41—Landlord and Tenant Act 1954, s 15. **Earl of Cadogan v Henthorne** [1956] 3 851, QBD.

Surrender of lease of whole premises—Right of landlord to possession of part sub-let—Rent and Mortgage Interest Restrictions (Amendment) Act 1933, s 3(1)—Increase of Rent and Mortgage Interest (Restrictions) Act 1920, s 15(3). **Cow v Casey** [1949] 1 197, CA.

RENT RESTRICTION (cont)**Sub-tenancy (cont)—****Subletting without landlord's consent—**

Landlord's right to obtain order of possession against sub-tenant when premises lawfully sublet—*Kenya. See East Africa* (Landlord and tenant—Rent restriction—Sub-tenancy—Subletting without landlord's consent).

Sub-tenant deemed to become tenant—

Acceptance by landlord of rent from head lessee after knowledge of breach of subletting covenant—Qualified acceptance—Question of fact whether such acceptance to be treated as unequivocal act of affirmation of tenancy—'Unlawful sub-letting'—No right of re-entry—Increase of Rent and Mortgage Interest (Restrictions) Act 1920, s 15(3). *Carter v Green* [1950] 1 627, CA.

Continued acceptance by landlord of rent from headlease after knowledge of breach of subletting covenant—Deemed to be dwelling-house to which Rent Acts apply—Increase of Rent and Mortgage Interest (Restrictions) Act 1920, s 15(3)—Increase of Rent and Mortgage Interest (Restrictions) Act 1938, s 7(1). *Wright and Bowers v Arnold* [1946] 2 616, CA.

Part of premises sub-let by widow of statutory tenant—Death of widow—'Determination' of interest—Increase of Rent and Mortgage Interest (Restrictions) Act 1920, s 15(3). *Lewis v Reeves* [1951] 2 855, CA.

Surrender of tenancy—**Acceptance of wife of statutory tenant as tenant—**

Whether equivalent to giving up possession. *Collins v Cloughton* [1959] 1 95, CA.

Contract by statutory tenant to purchase house—

Failure to complete—Recission of contract by landlord—Tenant remaining in possession—Nature of occupation. *Nightingale v Courtney* [1954] 1 362, CA.

Contractual tenancy from year to year—

Agreement to terminate and grant of licence to former tenant—Validity. *Foster v Robinson* [1950] 2 342, CA.

Tenancies excluded from being regulated tenancies—**Housing association—**

Association becoming immediate reversioner on lease—Tenancy subsisting at date of acquisition—Rateable value of dwelling-house then above Rent Act limit—Tenancy expired in October, 1965—Rent then in arrear—Action for possession brought in November, 1965—Rent Act 1965 (operative Dec 8, 1965) extended to dwelling house—Whether housing association entitled to recover possession on ground that tenancy was free from Rent Acts under Housing Repairs and Rents Act 1954, s 33(1), (2)(b)—Rent Act 1965, ss 1(2), 20(1)(a). *Dolphin Square Trust Ltd v Hartman* [1967] 1 624, CA.

Premises described in lease as shop and premises—

Parties contemplating letting as a shop—Used as dwelling-house by sub-tenant—Whether tenancy within Rent Acts—Rent Act 1968, s 1(1). *Ponder v Hillman* [1969] 3 694, ChD.

Tenancies within Rent Restrictions Acts—**Agreement to purchase house—**

Possession as tenant at will pending completion—payment of sum representing interest on unpaid purchase money—Failure to complete—Statutory tenancy. *Francis Jackson Developments Ltd v Stemp* [1943] 2 601, CA.

Tenant—**Adjudication of bankruptcy—**

No disclaimer of lease by trustee in bankruptcy—Bankrupt permitted by trustee to remain in residence—No statutory tenancy acquired. *Stafford v Levy* [1946] 2 256, CA.

Persons deriving title under original tenant—

Administratrix of original tenant's estate—Increase of Rent and Mortgage Interest (Restrictions) Act 1920, s 12(1)(f). *Harrison v Hopkins* [1949] 2 597, CA.

Termination of protected tenancy—**Statutory tenant person who immediately before termination was protected tenant—**

Bankruptcy of protected tenant—Effect—Tenancy vesting in trustee in bankruptcy—Bankrupt remaining in occupation—Disclaimer of tenancy by trustee in bankruptcy—Action by landlord for possession—Whether bankrupt a person who immediately before termination of tenancy was a protected tenant—Whether bankrupt entitled to protection as statutory tenant—Rent Act 1968, s 3(1). *Smalley v Quarrier* [1975] 2 688, CA.

Termination of statutory tenancy—**Substitution of contractual tenancy—**

Agreement that tenant should pay rates instead of landlord as theretofore—Corresponding decrease in rent. *M & H Steel (a firm) v Cockcroft* [1951] 2 175, CA.

Terms in contractual tenancy—**Incorporation into statutory tenancy—**

Agreement by contractual tenant to pay on expiration of tenancy '£40 towards re-decoration'—Increase of Rent and Mortgage Interest (Restrictions) Act 1920, s 15(1). *Boyer v Warbey* [1953] 1 269, CA.

Incorporation into statutory tenancy—

Landlord providing hot water, central heating and other services—Notice to quit—Tenant holding over as statutory tenant—Whether statutory tenant entitled to benefit of original terms of tenancy—'Attendance'—Increase of Rent and Mortgage Interest (Restrictions) Act 1920, ss 12, 15—Rent and Mortgage Interest Restrictions Act 1923, s 10. *Engvall v Ideal Flats Ltd* [1945] 1 230, CA.

Terms allowing bonus on punctual payment of rent—Agreement terminated by notice from landlord increasing rent—Additional rent on account of statutory increase for rates—Statutory tenancy—Whether proviso for bonus imported into statutory tenancy—Increase of Rent and Mortgage Interest (Restrictions) Act 1920, ss 2, 15(1)—Rent Restrictions (Notice of Increase) Act 1923, s 1. *Regional Properties Ltd v Oxley* [1945] 2 418, HL.

RENT RESTRICTION (cont)

Transfer of burden—

Repair—

Tenant liable to repair under agreement—Repairs done by landlord for many years—Whether transfer of burden implied. *Board of Governors of the London Hospital v Jacobs* [1956] 2 603, CA.

Transfer of liability for rates—

Corresponding reduction in rent—

Relevant date—Increase of Rent and Mortgage Interest (Restrictions) Act 1920, s 2(3), proviso. *Woodside House (Wimbledon) Ltd v Hutchinson* [1949] 2 709, CA.

RENT TRIBUNAL

Certiorari to quash decision of tribunal—

Circumstances in which certiorari will not lie—

Decision good on its face and not outside jurisdiction of tribunal—Furnished Houses (Rent Control) Act 1946, s 2. *R v Furnished Houses Rent Tribunal for Paddington and St Marylebone, ex parte Kendal Hotels Ltd* [1947] 1 448, KBD.

Circumstances in which certiorari will lie—

Excess of jurisdiction—Jurisdiction under Housing Repairs and Rents Act 1954, s 40(1)(b) (2)(b) (5). *R v Rent Tribunal for Paddington North and St Marylebone, ex parte Perry* [1955] 3 391, QBD.

Costs—

Certiorari granted against tribunal—Payment of costs by tribunal. *R v Kingston-upon-Hull Rent Tribunal, ex parte Black* [1949] 1 260, KBD.

Proceedings before tribunal—

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Power of tribunal. *R v Fulham, Hammersmith and Kensington Rent Tribunal, ex parte Zerek* [1951] 1 482, KBD.

Prohibition. *See Prohibition* (Rent tribunal).

Reference of contract—

Jurisdiction—

Jurisdiction of tribunal to set aside its own order—Notice of hearing of reference sent to landlord and tenant—Tenant not appearing at hearing—Tribunal making order in absence of tenant—Tenant subsequently informing tribunal that he never received notice of hearing—Tenant applying to tribunal for hearing and re-instatement of reference—Whether tribunal having power to re-open reference. *R v Kensington and Chelsea Rent Tribunal, ex parte MacFarlane* [1974] 3 390, QBD.

Reference by local authority—Validity of reference—Test—Whether reference made mala fide or frivolously, capriciously or vexatiously—Relevance of factors taken into or left out of account—Views of tenants—Likelihood of reductions of rent—Block references without individual consideration—Court's power to review administrative decision—Rent Act 1968, s 72(1). *Barnet and Camden Rent Tribunal, ex parte Frey Investments Ltd* [1972] 1 1185, CA.

Reference otherwise than by local authority—Jurisdiction of tribunal to refuse to entertain reference if satisfied reference frivolous or vexatious—Extent of jurisdiction—Rent Act 1968, s 73(5). *R v Kensington and Chelsea Rent Tribunal, ex parte MacFarlane* [1974] 3 390, QBD.

Reference under Furnished Houses (Rent Control) Act 1946. *See Rent control* (Reference to tribunal of contract for furnished letting).

Withdrawal of reference—

Withdrawal before tribunal have 'entered upon consideration' of reference—Time when withdrawal effective—Time when tribunal enter on consideration of reference—Withdrawal effective when delivered to tribunal's offices in office hours or reasonable time thereafter for withdrawal to be seen by clerk to tribunal—Tribunal entering on consideration as soon as all members have read papers and before meeting—Notice of withdrawal delivered to tribunal's offices after office hours on Friday—Members of tribunal reading papers in reference at home over weekend—Notice of withdrawal communicated to clerk on Monday morning—Withdrawal ineffective—Rent ineffective—Rent Act 1968, s 73(1). *R v Tottenham District Rent Tribunal, ex parte Fryer Bros (Properties) Ltd* [1971] 3 563, CA.

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Capital or income receipts—

Rentcharge payable for fixed period as consideration for transfer of property. *See Income tax* (Capital or income receipts—Transfer of capital asset—Cash receipts of fixed amounts over fixed period as consideration for transfer—Rentcharges).

Rule against perpetuities. *See Rule against perpetuities* (Remoteness—Rentcharge).

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Jointure rentcharge. *See Settlement* (Jointure rentcharge).

Tithe. *See Tithe and tithe rentcharge*.

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Breach of covenant—

Forfeiture of lease. *See Landlord and tenant* (Forfeiture of lease—Breach of repairing covenant).

Car—

Contract—

Implied term—Performance within reasonable time. *See Contract* (Implied term—Performance within reasonable time—Repair of motor car at request of car owner).

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REPAIR (cont)

- Chancel—
 - Liability to repair. *See* **Ecclesiastical law** (Chancel—Liability to repair).
- Cost of repairs—
 - Lease. *See* **Landlord and tenant** (Repair—Cost of repairs).
- Covenant—
 - Lease. *See* **Landlord and tenant** (Repair).
- Damages for failure to repair. *See* **Landlord and tenant** (Repair—Damages for failure to repair).
- Dangerous thing—
 - Repairer's liability in negligence. *See* **Negligence** (Dangerous things—Repairer's liability).
- Drains. *See* **Land drainage** (Drainage board—Maintenance and repair of drains).
- Dyke. *See* **Land drainage** (Drainage board—Maintenance and repair of dyke).
- Hedge—
 - Boundary. *See* **Boundary** (Hedge—Repair).
- Implied covenant in lease. *See* **Landlord and tenant** (Repair—Implied covenant).
- Income tax—
 - Capital or revenue expenditure. *See* **Income tax** (Deduction in computing profits—Capital or revenue expenditure—Repairs).
- Land drainage—
 - Commutation of obligation to repair by catchment board. *See* **Land drainage** (Catchment board—Commutation of obligation to repair).
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 - Implied covenant. *See* **Landlord and tenant** (Implied covenant to repair).
- Lien—
 - Repairer's lien. *See* **Lien** (Repairer's lien).
- Premises—
 - Damages for breach of covenant to repair. *See* **Landlord and tenant** (Damages for failure to repair).
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 - Duty of catchment board. *See* **Catchment board** (Sea wall—Duty to repair).
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 - Dry dock—
 - Statutory regulations. *See* **Dock** (Repair of ship in dry dock).
 - Execution of repairs prior to sale—
 - Admiralty proceedings. *See* **Admiralty** (Appraisal and sale—Execution of repairs prior to sale).
 - Restriction on. *See* **Dock** (Ship-repairs and alterations—Licence).
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- Income tax. *See* **Income tax** (Repayment).

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- Provisions brought into operation on different dates. *See* **Statute** (Commencement—Repeals—Different provisions brought into operation on different dates).
- Retrospective operation of repeal. *See* **Statute** (Retrospective operation—Repeal).
- Statute. *See* **Statute** (Repeal).

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- Adoption proceedings—
 - Disclosure of confidential reports. *See* **Adoption** (Practice—Reports—Disclosure).
- Chambers proceedings of. *See* **Practice** (Chambers proceedings—Queen's Bench Division—Report of proceedings).
- Official Referee—
 - Reference on. *See* **Practice** (Reference to referee—Report on reference).
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- Company—
 - Meeting. *See* **Company** (Meeting—Representation).
- Co-plaintiffs. *See* **Practice** (Parties—Plaintiff—Co-plaintiffs should be represented by same solicitors unless separate representation authorised).
- Criminal trial—
 - Defendant. *See* **Criminal law** (Trial—Defendant—Representation).
- Deceased person—
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 - Practice. *See* **Probate** (Practice—Non-contentious probate—Grant of representation).
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See **Practice** (Parties—Representative proceedings).

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- Chattel already subject of hiring agreement—
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 Requisition notice sufficient to determine hiring agreement—Defence (General) Regulations 1939, reg 53(2). **Lane v Minister of War Transport** [1942] 2 28, CA.
 Compensation—
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 Disclaimer—Effect—House requisitioned by military authorities—Agreement with tenant—Compensation payable in respect of house and in respect of storage of furniture—Disclaimer of lease by tenant—Whether tenant still entitled to compensation in respect of storage of furniture—Construction of agreement—Compensation (Defence) Act 1939, s 2—Landlord and Tenant (Requisitioned Land) Act 1942, ss 1, 2. **Looker v R** [1944] 2 513, KBD.
 Application of compensation—
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 Land subject to mortgage—Land leased to company—Covenant by lessee to insure against fire—Insurance money to be laid out in re-building—Mortgage by lessee—Property destroyed by fire while requisitioned—Insurance policy not kept up—Whether compensation to be applied in same manner as money receivable under policy—Compensation (Defence) Act 1939, s 2(1)(b), s 14. **Radnor (Earl) v Folkestone Pier and Lift Co** [1950] 2 690, ChD.
 Person entitled to compensation—
 Requisition of ship—Purchase of ship subject to time charterparty—Whether charterer entitled to compensation paid to purchaser—Compensation (Defence) Act 1939, ss 4 15. **Port Line Ltd v Ben Line Steamers Ltd** [1958] 1 787, QBD.
 Sale of requisitioned land—Derequisitioned before completion—Entitlement of purchaser to compensation—Compensation (Defence) Act 1939, s 2(1)(b)(3). **Re Hamilton-Snowball's Conveyance** [1958] 2 319, ChD.
 Release from requisition—
 Compensation to owner for accepting licensee as statutory tenant—Date when compensation becomes payable—Requisitioned Houses and Housing (Amendment) Act 1955, s 4(2)(c). **East Ham Corp v Ministry of Housing and Local Government** [1959] 3 508, ChD.
 Right of owner to compensation—
 Owner—Receiver of rackrent—Formal claim made by lessee—Right of lessor to claim as 'owner'—Computation of rackrent—Regard to restrictive covenants in lease—Date at which rackrent to be computed—Compensation (Defence) Act 1939, ss 2(3), 11, 17(1)—Public Health Act 1936, s 343(1). **Borthwick-Norton v Collier** [1950] 2 204, CA.
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 Cargo—Ship ordered by Minister of Shipping to proceed from Belfast to Manchester to discharge requisitioned cargo—Whether requisitioning of cargo amounts to requisitioning of ship—Compensation (Defence) Act 1939, ss 4, 7—Defence (General) Regulations 1939, reg 53(2). **Re a dispute between N G Nicolaou and the Minister of War Transport and N G Nicolaou and the Admiralty** [1944] 2 322, KBD.
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 Exclusion of damage to land while possession retained—Damage to land—Air-raid shelter erected during possession by Crown—Shelter removed after possession yielded up—Right to compensation for period between return of possession and restoration to original condition—Compensation (Defence) Act 1939, s 3(2)—Requisitioned Land and War Works Act 1948, s 11(2). **J Lyons & Co Ltd v Secretary of State for Home Affairs** [1950] 1 280, KBD.
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Powers of competent authority—Agreement purporting to grant tenancy—Whether lease or licence—Defence (General) Regulations 1939, reg 51(1)(2). **Ministry of Agriculture and Fisheries v Matthews** [1949] 2 724, KBD.

Powers of competent authority—Extent of powers—Whether including power to transfer requisition—Defence (General) Regulations 1939, reg 51(1)(2). **Blount v The War Office** [1953] 1 1071, Assizes.

Powers of competent authority—Extent of powers—Whether including power to transfer requisition—Defence (General) Regulations 1939, regs 49, 51. **Progress Building Ltd v Westminster City Corp** [1947] 1 684, KBD.

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Delegation to local authority—Exercise of power by authority—Conditions in circulars issued by Minister of Health—Purported ratification and adoption by Minister—Defence (General) Regulations 1939, reg 51(1)(5)—Supplies and Services (Transitional Powers) Act 1945, s 1(1). **Blackpool Corp v Locker** [1948] 1 85, CA.

Effect of delegation—Power to take possession delegated to local authority—Possession taken for the purpose of providing accommodation for refugees from enemy attack—Local authority directed to retain possession for different purposes—Powers of requisitioning authority—Emergency Powers (Defence) Act 1939, s 1—Requisitioned Land and War Works Act 1945, s 28(2)—Defence (General) Regulations 1939, reg 51(1)(5). **Gordon, Dadds & Co v Morris** [1945] 2 616, ChD.

Letter of authority from official of Ministry of Health to town clerk—Right of local authority to sue for possession—Requisition 'necessary or expedient'—Defence (General) Regulations 1939, reg 51(1)(2)(a)(5) (as amended)—Emergency Powers (Defence) Act 1939, s 7. **Lewisham Borough Council v Roberts** [1949] 1 815, CA.

Sufficiency of letter from Minister—Requisition of part of premises—Need for part to be specified in delegation—Defence (General) Regulations 1939, reg 51(1)(5)—Emergency Powers (Defence) Act 1939, s 7. **Carlish v East Ham Corp** [1948] 2 550, KBD.

Discretion of competent authority—

No jurisdiction of court to interfere with bona fide exercise of discretion—Defence (General) Regulations 1939, reg 51(1). **Carltona Ltd v Comrs of Works** [1943] 2 560, CA.

Purchase of requisitioned premises—

Right of purchaser to possession—Defence (General) Regulations 1939, reg 51(1). **Erith Corp v Holder** [1949] 1 389, CA.

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REQUISITIONS ON TITLE

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Generally. *See* **Contract** (Rescission).

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Work done on property of another—Work done by party in honest belief property belonging to him—Recovery of property by true owner—Liability of true owner to pay compensation for work done—Sale of motor vehicle—Sale by thief—Purchase by buyer acting in good faith and without notice of defect in title—Buyer effecting extensive repairs to vehicle—Vehicle recovered by police—Interpleader proceedings—Vehicle to be returned to person from whom stolen—Claim by buyer for cost of repairs—Whether recoverable. **Greenwood v Bennett** [1972] 3 586, CA.

RESTITUTION OF CONJUGAL RIGHTS

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RESTRAINT OF TRADE BY AGREEMENT

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Award restricting area within which a co-operative society might trade—

Society member of registered co-operative union—Society ceasing to be member of union—Validity of award—Industrial and Provident Societies Act 1893, s 22. **Birtley District Co-operative Society Ltd v Windy Nook & District Industrial Co-operative Society Ltd** [1959] 1 622, QBD.

Employer and employee—

Companies each agreeing not to employ persons employed by the other within previous five years—

Reasonableness—Restriction on employees' freedom of choice of employment—Public policy. **Kores Manufacturing Co Ltd v Kolok Manufacturing Co Ltd** [1958] 2 65, CA.

RESTRAINT OF TRADE BY AGREEMENT (cont)

Exclusive services agreement—

Standard form agreement—

Restrictions during continuance of agreement—Agreement between song-writer and music publishers—Writer undertaking to provide exclusive services to publishers—Writer assigning to publishers copyright in existing works and works to be composed during period of years—Publishers under no obligation to publish writer's works—Writer entitled to £50 advance on royalties and further advances of £50 on recoupment of previous advance from royalties received—Publishers alone entitled to terminate agreement by notice—Whether doctrine of restraint of trade applicable to agreement—Whether agreement in unreasonable restraint of trade. **A Schroeder Music Publishing Co Ltd v Macaulay** [1974] 3 616, HL.

Football Association and Football League—

Retention and transfer system in respect of professional players—

Whether in unjustifiable restraint of trade—Whether player registered with and formerly employed by football club could maintain action against Football Association and Football League for declaration of invalidity of their relevant rules and regulations in the absence of direct contractual relation with Association and League. **Eastham v Newcastle United Football Club Ltd** [1963] 3 139, ChD.

Lessor and lessee—

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Lease containing covenant in restraint of trade—Covenant by lessee—Election between observing covenant and surrendering lease—Whether lessee should be put to election. **Amoco Australia Pty Ltd v Rocca Bros Motor Engineering Co Pty Ltd** [1975] 1 968, PC.

Licensor and licensee—

Reasonableness as between parties—

Public interest—Licence to make and use patented material—Compensation payable to licensors on licensees using or selling more than stated amount—Continued operation of provision after expiration of patents. **Tool Metal Manufacturing Co Ltd v Tungsten Electric Co Ltd** [1955] 2 657, HL.

Master and servant—

Articled clerk—

Covenant not to practise within 15 miles of town where employer's business situated during whole life of employee—Reasonableness. **Dickson v Jones** [1939] 3 182, ChD.

Butcher's shop—

Manager—Scope of restrictions on service—Radius agreement—Radius of five miles—Trade proved not to exceed one mile—Validity. **Empire Meat Co Ltd v Patrick** [1939] 2 85, CA.

Calendered sheeting business—

World-wide restriction—Employers manufacturing PVC calendered sheeting—Employers having large percentage of UK market for PVC calendered sheeting for adhesive tape but much smaller percentage of total PVC calendered sheeting market—Defendant employed mainly in relation to production of PVC calendered sheeting for adhesive tape—Agreement that defendant not to seek employment with any of employers' 'competitors' in PVC calendering field for at least one year after leaving employers—Reasonableness. **Commercial Plastics Ltd v Vincent** [1964] 3 546, CA.

Clause not expressed to be in restraint of trade—

Provision for payment of money—Duty of court to have regard to likely effect of provision—Provision clearly operating in restraint of trade—Provision to be treated as being in restraint of trade. **Stenhouse Australia Ltd v Phillips** [1974] 1 117, PC.

Collector and salesman in credit drapery trade—

Covenant for period of five years after termination of employment not to canvass or solicit orders from customers in employers' books during last three years of employment—Employment terminable at two weeks' notice—Covenant unreasonable. **M & S Drapers (a firm) v Reynolds** [1956] 3 814, CA.

Consideration for agreement—

Agreement entered into at termination of employment—Transfer of shares in limited company—Consideration paid by company—Severability—Companies Act 1929, s 45. **Spink (Bournemouth) Ltd v Spink** [1936] 1 597, ChD.

Credit betting business—

Defendant employed as manager by firm of bookmakers and commission agents in Cheltenham—Clause in contract of service that for three years after cessation of service the defendant would not carry on business of commission agents in or within 12 miles of Cheltenham—New terms of service superseding original service agreement—Defendant later dismissed and started commission agent business within area—Whether restriction is illegal restraint of trade—Whether restriction binding on defendant under new terms of service. **S W Strange Ltd v Mann** [1965] 1 1069, ChD.

Dairyman and milk roundsman—

Agreement not for one year after termination of employment to serve or sell milk or dairy produce to customers served by employee during last six months of employment—Validity. **Home Counties Dairies Ltd v Skilton** [1970] 1 1227, CA.

Estate agents' clerk and negotiator in charge of branch office—

Business having recurring customers—Covenant not to carry on or work in similar business within five miles radius of branch and main offices for three years after end of employment—Severability of restrictions as to branch and as to main offices—Employee unqualified—Relevance to reasonableness of restriction in the public interest. **Scorer v Seymour-Johns** [1966] 3 347, CA.

Hairdressing salon—

Standard form of contract—Qualified hairdressing assistant—Agreement not for one year after termination of employment to be in any way engaged in business of ladies' hairdresser in any capacity—Validity. **Marion White Ltd v Francis** [1972] 3 857, CA.

RESTRAINT OF TRADE BY AGREEMENT (cont)**Master and servant (cont)—****Insurance broker—**

Period of restraint—Reasonableness—Restraint for five years after termination of employment—Insurance brokers—Prohibition on employee soliciting former employer's clients—'Clients' narrowly defined—Test for determining whether period reasonable—Question to be determined by judge—Determination by judge after informing himself of all relevant circumstances. **Stenhouse Australia Ltd v Phillips** [1974] 1 117, PC.

Medical practice—

Covenant by doctor in 'assistantship' agreement—Covenantees general practitioners—Covenant not to 'practise ... in any department of medicine surgery or midwifery nor accept nor fill any professional appointment' within ten miles for five years—Reasonableness—Onus of proof—Special circumstances justifying restraint. **Routh v Jones** [1947] 1 758, CA.

Scope—Limits of time and space—Covenant not to practise 'as physician surgeon or apothecary at any time within five miles or professionally visit or consult with patients of practice'. **Jenkins v Reid** [1948] 1 471, ChD.

Sales representative—

Covenant not for two years after end of employment to canvass etc any person who shall at any time during employment have been a customer of the employer—Restraint might apply to customers unknown to employee, and to customers who might have ceased to be customers before end of employment—Validity. **G W Plowman & Son Ltd v Ash** [1964] 2 10, CA.

Covenant not to deal in allocated district in similar goods for one year after termination of employment—Same clause of agreement also requiring representative not to solicit orders or supply goods to customers in district supplied by company in last 12 months of employment—Allocated district covering Manchester area—Restriction on dealing invalid as being too wide—Whether restriction on soliciting and supplying severable as a matter of construction—Whether incumbent on court to consider as a matter of policy whether restriction should be treated as severable. **T Lucas & Co Ltd v Mitchell** [1972] 3 689, CA.

Covenant not to solicit orders etc in area in which he worked for employers—Sales representative for spare parts for motor car lighting systems—Reasonableness of covenant—Covenant applicable to many persons not customers of employers nor called on during employment—Validity. **Gledhow Autoparts Ltd v Delaney** [1965] 3 288, CA.

Partnership—**Medical partnership—**

National Health Service practice—Covenant by outgoing partner not to practise within a prescribed area—Covenant by outgoing partner not to attend patients of the partnership—Whether covenants valid—National Health Service Act 1946, s 35. **Macfarlane v Kent** [1965] 2 376, ChD.

Restriction on practice in event of dissolution of partnership—Prohibition on professionally advising, attending, prescribing for or treating any patient or former patient of partnership for period of five years—Whether restraint general so as to preclude practice as a consultant—Whether restraint too wide. **Peyton v Mindham** [1971] 3 1215, ChD.

Retiring partner prohibited from 'directly or indirectly carrying on or being interested or concerned in carrying on the business or profession of medicine...within a radius of ten miles'—Reasonableness. **Whitehill v Bradford** [1952] 1 115, CA.

Retiring partner prohibited from engaging in practice within a radius of ten miles of partnership surgery—Whether restraint general so as to preclude practice as a consultant—Whether reasonable. **Lyne-Pirkis v Jones** [1969] 3 738, CA.

Newspaper partnership—

Outgoing partner 'not...directly or indirectly [to] carry on or be engaged or interested in any business similar to or competing with the business of the partnership'—Publication of weekly newspaper dealing with sport and entertainment—Purchase by one partner of other partner's share—Contract of service with competing newspaper—Severability of covenant. **Ronbar Enterprises Ltd v Green** [1954] 2 266, CA.

Pension scheme—**Trust—**

Forfeiture provision—Obligatory pension scheme—Rule that benefits of retired employees who entered employment with competing firms would be liable to be forfeited—Whether rule unenforceable and void for restraint of trade. **Bull v Pitney-Bowes Ltd** [1966] 3 384, QBD.

Petrol filling station—**Solus agreement—**

Agreement between owner of garage and petrol supplier for purchase and sale exclusively of supplier's products—Obligation of garage owner to carry on filling station while agreement in force—Obligation to keep station open—Obligations to be undertaken by successor—Duration of two agreements, for four years and five months and twenty-one years respectively—One agreement supported by and partly repealed in mortgage—Whether doctrine of restraint of trade applied to agreements and to mortgage—Whether agreements in unreasonable restraint of trade. **Esso Petroleum Co Ltd v Harper's Garage (Stourport) Ltd** [1967] 1 699, HL.

Agreement between owner of garage and petrol supplier for purchase and sale exclusively of supplier's products—Obligation on garage owner to carry on filling station while agreement in force—Duration of agreement 12 years if 600,000 gallons of petrol then sold—Validity of agreement. **Petrofina (Gt Britain) Ltd v Martin** [1966] 1 176, CA.

RESTRAINT OF TRADE BY AGREEMENT (cont)

Petrol filling station (cont)—

Solus agreement (cont)—

Agreement between owner of garage and petrol supplier for purchase and sale exclusively of supplier's products—Obligation to be undertaken by successor—Duration of agreement seven and a half years—Injunction by consent until trial restraining garage owner from purchasing motor fuel from other suppliers—Subsequent decisions of Court of Appeal that doctrine of restraint of trade applied to such agreements—Motion to discharge injunction on ground that agreement was in restraint of trade. **Regent Oil Co Ltd v J T Leavesley (Lichfield) Ltd** [1966] 2 454, ChD.

Agreement between owner of garage and petrol supplier for purchase and sale exclusively of supplier's products—Restraint also regarding lubricating oils—Obligation on garage owner to carry on filling station while agreement in force—Duration of agreement twelve years if six hundred thousand gallons of petrol then sold—Agreement not part of lease or mortgage—Whether doctrine of restraint of trade applied to agreement—Whether agreement in unreasonable restraint of trade. **Petrofina (Gt Britain) Ltd v Martin** [1966] 1 126, CA.

Lease by garage owner to petrol supplier—Underlease to company to operate service station—Covenant in underlease for exclusive sale of supplier's products—Assignment of underlease by licence granted by supplier—Interim injunction to restrain breach of covenant. **Cleveland Petroleum Co Ltd v Dartstone Ltd** [1969] 1 201, CA.

Legal charge—Agreement in legal charge between owner of garage and petrol supplier to purchase, resell and advertise exclusively supplier's products—Reasonableness of restraints—Limitation of tie to five years—Loan at low rate of interest repayable during period of tie—Reasonableness in reference to interests of parties—Reasonableness in interests of public—General considerations of economic and social policy—Relevance—No evidence that restraints severely and arbitrarily restricting freedom to trade. **Texaco Ltd v Mulberry Filling Station Ltd** [1972] 1 513, ChD.

Legal charge—Loan by supplier to dealer on legal charge—Advance of rebates under solus agreement that dealer should purchase from suppliers and sell exclusively their petrol products—Arrangements terminable by dealer on notice if profit margin not maintained—Profit margin defined as difference between wholesale and retail prices published from time to time in the *petroleum Times*—Validity of arrangements—Whether affected by Resale Prices Act 1964, s 1(2)(4). **Regent Oil Co Ltd v Aldon Motors Ltd** [1965] 2 644, CA.

Mortgage—Agreement between owner of garage and petrol supplier for purchase and resale exclusively of supplier's products—Duration of longest agreement 21 years—Obligation to keep garage open and conduct its business—Implication of term—Continuance and enforcement of obligation in regard to retail price maintenance not necessary for business efficacy—Injunction granted to enforce negative obligation. **Esso Petroleum Co Ltd v Harper's Garage (Stourport) Ltd** [1966] 1 725, CA.

Pleading—

Defence—

Justifying circumstances to be pleaded in defence. **Pharmaceutical Society of Great Britain v Dickson** [1968] 2 686, HL.

Professional society—

Resolution of members restricting trading activities of members—

Part of code of professional conduct, binding in honour but enforceable only through disciplinary statutory committee—Justiciable issue—Member entitled to court's determination of validity of resolution—No evidence of reasonableness of restriction in public interest—Whether restriction in unreasonable restraint of trade—Whether ultra vires the society as not sufficiently related to relevant main object of society. **Pharmaceutical Society of Great Britain v Dickson** [1968] 2 686, HL.

Public house—

Tied house covenants—

Applicability of doctrine of restraint of trade—Validity of ordinary tied house covenants with brewers. **Petrofina (Gt Britain) Ltd v Martin** [1966] 1 126, CA.

Right to work—

Monopoly control—

Exclusion from work—Public policy. **Nagle v Feilden** [1966] 1 689, CA.

Separate agreements—

Lease and underlease—

Single transaction—Estoppel—Underlease unenforceable as containing covenants in restraint of trade—Enforceability of lease—Provision in lease asserting that it was independent of any other contract, lease or agreement between parties—Lease by dealer of site of petrol filling station to petrol company—Underlease by petrol company to dealer—Underlease unenforceable as containing petrol tie in restraint of trade—Whether lease unenforceable—Whether dealer estopped from asserting that lease unenforceable. **Amoco Australia Pty Ltd v Rocca Bros Motor Engineering Co Pty Ltd** [1975] 1 968, PC.

Vendor and purchaser—

Sale of business—

Accountant—Covenant by vendor not to carry on accountancy business within 15 mile radius for 15 years—Reasonableness. **D Bates & Co v Dale** [1937] 3 650, ChD.

Covenant by vendor of business not to compete—Gift by vendor to sons of capital to establish competing business—Breach of covenant—Procuring breach. **Batts Combe Quarry Ltd v Ford** [1942] 2 639, CA.

Sale of controlling interest in company—

Covenant not directly or indirectly to engage in sardine business in Canada—Covenant entered into by managing director of company on sale of controlling interest in company—Injury to public—How far covenantor prevented from holding shares in competing company—Declaration as to validity of covenants. **Connors Bros Ltd v Connors** [1940] 4 179, PC.

RESTRAINT OF TRADE BY AGREEMENT (cont)

Vendor and purchaser (cont)—

Sale of motor car—

Covenant not to resell motor car within two years—Breach—Measure of damages. **British Motor Trade Assn v Gilbert** [1951] 2 641, ChD.**RESTRAINT ON ALIENATION**

Fee simple estate—

Condition—

Repugnancy—Condition in restraint of alienation—Covenant not to sell land separately from adjoining land—Purchaser acquiring plot of land adjoining land already owned by purchaser—Covenant by purchaser not to sell plot separately from adjoining land—Whether covenant void as being unlawful restraint on alienation. **Caldy Manor Estate Ltd v Farrell** [1974] 3 753, CA.**RESTRAINT ON ANTICIPATION***See* **Husband and wife** (Restraint on anticipation).**RESTRICTION**Lighting. *See* **Lighting restriction**.

Planning—

Registration as local land charge. *See* **Land charge** (Local land charge—Town planning—Prohibition or restriction).**RESTRICTION ORDER**Mentally disordered prisoner. *See* **Sentence** (Hospital order—Restriction order).**RESTRICTIONS ON PAY INCREASES**Statutory restriction. *See* **Master and servant** (Remuneration—Restrictions on pay increases).**RESTRICTIVE COVENANT**

Compensation for accepting covenant—

Company director—

Income tax. *See* **Income tax** (Emoluments from office or employment—Compensation income tax).

Consideration for grant of covenant—

Income tax—

Capital or income. *See* **Income tax** (Capital or income receipts—Restrictive covenant).

Land—

Covenant affecting land. *See* **Restrictive covenant affecting land**.Restraint of trade. *See* **Restraint of trade by agreement**.**RESTRICTIVE COVENANT AFFECTING LAND**

Annexation of benefit—

Covenant expressed to be for benefit of remainder of vendor's estate—

Whether benefit annexed to every part of estate retained. **Re Jeff's Transfer (No 2)** [1966] 1 937, ChD.

Covenant expressed to be for benefit of 'vendor's adjoining and neighbouring land'—

Defendant engaged in trade and business on her land—Vendor sold some of land in neighbourhood to plaintiffs—Whether plaintiffs entitled to enforce covenant—Whether annexation of covenant was to whole of vendor's adjoining and neighbouring land or to each and every part of it—Planning authority for use of land in manner in fact constituting breach of restrictive covenant—No bar to enforcement of restrictive covenant. **Russell v Archdale** [1962] 2 305, ChD.

Covenant to 'enure for the protection of the adjoining or neighbouring land part of or lately part of the Selwyn estate'—

Certainty of description of land and meaning of 'lately'—Whether benefit of covenant annexed to parts of Selwyn estate. **Re Selwyn's Conveyance** [1967] 1 339, ChD.

Description of land to be benefited—

Insufficient description. **Re Heywood's Conveyance** [1938] 2 230, ChD.

Retained land—

Acts detrimental to adjoining land—Benefit of whole or any parts of retained land. **Zetland (Marquess) and Zetland Estates Co v Driver** [1938] 2 158, CA.

Assignment of benefit—

Benefit of restrictive covenant annexed to whole of land retained by vendor—

Express assignment of benefit to subsequent purchaser of the retained land to whom benefit of restrictive covenant would pass automatically—Whether benefit assignable a question of construction. **Stilwell v Blackman** [1967] 3 514, ChD.

Enforcement of covenant by assignee—

Covenant to protect covenantee's business—No identification of land to be benefited so as to annex covenant to land—Death of covenantee—No assent to vesting of benefit in beneficiary entitled—power of beneficiary to assign benefit—Open to court to look at attendant circumstances to see if land to be benefited shown with sufficient certainty. **Newton Abbot Co-operative Society Ltd v Williamson and Treadgold Ltd** [1952] 1 279, ChD.

Benefit of covenant—

Capacity of retained land to be benefited by enforcement of covenants—

Private roadway—plaintiffs intending purchasers of land to which access given by a private roadway—Defendants owners of soil of roadway—Defendants assignees of restrictive covenants affecting land to be purchased by plaintiffs—Restrictions limited user of land—Increase of buildings on land, if restrictions were not binding, would increase use of roadway and might lead to greater costs of repairing road and reduce defendants' chance of selling roadway—Restrictions therefore sensibly affecting roadway—Defendants entitled to enforce restrictions. **Re Gadd's Land Transfer** [1965] 2 800, ChD.

RESTRICTIVE COVENANT AFFECTING LAND (cont)

Benefit of covenant (cont)—

Land benefited—

Conflicting clauses in deed—Land too extensive to be benefited. **Re Ballard's Conveyance** [1937] 2 691, ChD.

No building scheme—

Devolution of benefit of covenants—Subsequent purchaser of part of land retained. **Drake v Gray** [1936] 1 363, CA.

Persons not parties to covenant—

Assigns of purchasers from common vendor—Person not party to nor referred to in deed containing covenant—Law of Property Act 1925, s 56(1). **White v Bijou Mansions Ltd** [1938] 1 546, CA.

Settled land—

Right of tenant for life to enforce covenant—Original covenantee tenant for life—Death of covenantee—Trustees of settlement as special executors executing vesting assent in favour of plaintiff as tenant for life—Vesting assent containing no express reference to benefit of covenant—Special executors bare trustees of benefit of covenant for plaintiff—Plaintiff entitled to sue on covenant in equity without making special executors parties—Settled Land Act 1925, s 7(1). **Earl of Leicester v Wells-next-the-Sea Urban District Council** [1972] 3 77, ChD.

Breach of covenant in conveyance—

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Community of interests—

Reciprocity of obligation—Estate laid out in lots—Division into sublots—Action by purchaser of one sublot against another. **Lawrence v South County Freeholds Ltd** [1939] 2 503, ChD.

Reciprocity of obligation—Scheme restrictions relating to original plot—Division into subplots—No covenants between sub-purchasers inter se or with sub-vendor—Whether benefit of covenants enforceable by sub-purchasers inter se. **Brunner v Greenslade** [1970] 3 833, ChD.

Criteria necessary to establish existence of scheme—

Effect of omission of restrictions from minority of transfers—Provision that covenants should enure for benefit of 'remainder of Estate of vendor'—Whether 'remainder' meant unsold part. **Eagling v Gardner** [1970] 2 838, ChD.

Deed of mutual covenant—

Estate of common vendor not laid out in plots before conveyances to purchasers—All conveyances contained covenants in substantially the same terms—Covenants included one not to use dwellinghouse or other building otherwise than as a private residence—Plaintiffs, owners of four houses on property, entitled to benefit of covenant—Defendants purchased house on property with knowledge of covenants—Demolished house and erected instead a building containing nine residential flats—Whether building scheme established notwithstanding estate not laid out in lots before sale—Remedy—Injunction or damages. **Baxter v Four Oaks Properties Ltd** [1965] 1 906, ChD.

Defined area—

Reservation of right to vendor to sell unsold land free from restrictions—Existence of defined area a matter of conjecture—Whether building scheme would be implied. **Re Wembley Park Estate Co Ltd's Transfer** [1968] 1 457, ChD.

Division into lots—

Common ownership of subsequent purchaser—Land subject to scheme divided into lots—Lots conveyed subject to restrictions imposed by scheme—Certain lots subsequently coming into common ownership—Common owner subsequently conveying lots to different purchasers—Conveyances expressed to be subject to restrictions imposed by scheme—Whether purchasers of lots previously in common ownership and successors in title entitled to enforce restrictions inter se. **Texaco Antilles Ltd v Kernochan** [1973] 2 118, PC.

Termination—

Superseding covenants—Purchasers mutually release covenants and enter into superseding covenants—Whether building scheme terminated—Joint restrictive covenant by tenants in common in deed of 1899—Whether covenant effective to give rise to equitable restriction binding successors in title. **Re Pinewood Estate, Farnborough** [1957] 2 517, ChD.

Construction of covenant—

Erection of building—

Covenant against erecting a building—Moving shed erected on free land to land subject to covenant—Breach. **Gardiner v Walsh** [1936] 3 870, ChD.

Permit—

Covenant not to permit land to be used for other than specified purpose—Sale of land by covenantee—Covenant by purchaser T Ltd not to 'cause or permit' land to be used otherwise than for horse-racing, etc—Covenant limited so that T Ltd not liable for breach after parting with land—Contract for sale by T Ltd to third party with intention of using land for development—Intention known to T Ltd—Whether by completing sale purchaser would permit land to be used in breach of covenant. **Tophams Ltd v Sefton (Earl)** [1966] 1 1039, HL.

Implication as to implying control of use of land by covenantor—Covenant by purchaser not to 'use or permit the use of' property conveyed for purpose other than small holdings and allotments—Purchaser local authority—Land no longer required for allotments—Land appropriated for housing—Condition of sale by local authority that purchasers build houses on land—Whether by completing sale local authority 'permitting' purchasers to use land in breach of covenant. **Earl of Leicester v Wells-next-the-Sea Urban District Council** [1972] 3 77, ChD.

RESTRICTIVE COVENANT AFFECTING LAND (cont)**Construction of covenant (cont)—****Remainder of estate—**

Provision that covenant should enure for benefit of 'remainder of Estate of vendor—Covenant not to erect buildings on property 'except a private dwelling-house'—Dwelling-house already on property at date of purchase—Whether covenant contemplated additional dwelling-house. **Eagling v Gardner** [1970] 2 838, ChD.

Use as dwelling-house—

Covenant by purchaser not to use burdened property 'for any purpose other than that of a single private dwelling-house'—Dwelling-house already on property at date of purchase—Purchaser obtaining planning permission to erect a second dwelling-house on part of burdened property—Whether covenant preventing erection of second private dwelling-house on burdened land. **Re Endericks' Conveyance** [1973] 1 843, ChD.

Damages in lieu of injunction. *See* **Injunction** (Damages in lieu of injunction—Breach of restrictive covenant affecting land).

Declaration whether covenant affecting land or enforceable—**Costs of High Court application—**

Declaration that land not affected by restrictions—No prior application to Lands Tribunal for modification or discharge—Defendants' costs to date of adjournment to judge to be paid by the plaintiffs on common fund basis—Law of Property Act 1925, s 84(2). **Re Wembley Park Estate Co Ltd's Transfer** [1968] 1 457, ChD.

Incidence of costs—Law of Property Act 1925, s 84(2). **Re Jeffkins' Indentures** [1965] 1 608, ChD.

Prior application to Lands Tribunal—Hostile litigation between objectors and plaintiff modification of covenant—Costs in High Court—Law of Property Act 1925, s 84(2). **Re Jeff's Transfer (No 2)** [1966] 1 937, ChD.

Prior application to Lands Tribunal—Objection raised before Lands Tribunal to modification of restrictive covenant—Application to High Court necessitated by objection—Objectors consenting when High Court proceedings instituted, to order that they were not entitled to enforce covenant—Objectors not entitled to costs in High Court—Law of Property Act 1925, s 84(2). **Re Jeffs' Transfer** [1965] 2 798, ChD.

Covenants not to build or to fell trees—

Nobody legally entitled to enforce them—Small part of land subject to covenants intended as school site—No appearance of persons interested—Discretion whether to make declaration—Law of Property Act 1925, s 84(2). **Re Freeman-Thomas Indenture** [1957] 1 532, ChD.

Discretion—

Permission for development not yet obtained—Whether court should make declaration that restrictions did not affect land, although permission for development might not be obtained—Law of Property Act 1925, s 84(2). **Re Wembley Park Estate Co Ltd's Transfer** [1968] 1 457, ChD.

Form of declaration—

Covenants imposed by the same deeds affected also other land not belonging to applicant—Proper form of declaration. **Re Jeffkins' Indentures** [1965] 1 608, ChD.

Future covenant—

Application to determine enforceability of restrictions if contract completed—Future question—No jurisdiction under statute to decide future question—Jurisdiction of court to entertain matter under general jurisdiction—Law of Property Act 1925, s 84(2). **Re Gadd's Land Transfer** [1965] 2 800, ChD.

Discharge or modification—**Application for leave to apply to Lands Tribunal—**

Proceedings to enforce covenant—Circumstances in which leave to apply and stay of proceedings should be granted—Law of Property Act 1925, s 84(9). **Richardson v Jackson** [1954] 1 437, ChD.

Change of circumstances—

Covenant imposed in February 1963—Application to modify in February, 1965—No change of circumstances affecting land—Applicants covenantors, respondents covenantees—Modification refused—Law of Property Act 1925, s 84(1). **Cresswell v Proctor** [1968] 2 682, CA.

Condition as to compensation—

Delay in enforcing covenants—Adjoining owners bringing action on covenants more than year after building operations begun in breach of covenants—Application for modification granted on condition compensation paid to adjoining owners—Whether delay having effect of wiping out loss consequent on modification—Law of Property Act 1925, s 84. **Re Spencer Flats Ltd** [1936] 2 1392, ChD.

Jurisdiction—

Applicant a party to covenant—Law of Property Act 1925, s 84(1), (12)—Landlord and Tenant Act 1954, s 52. **Ridley v Taylor** [1965] 2 51, CA.

Determining objectors' title to restrictions—Jurisdiction of tribunal—Title based on building scheme—Finding that no building scheme—Propriety of determination—Law of Property Act 1925, s 84(1), (2). **Re Purkiss' Application** [1962] 2 690, CA.

Land affected by any restriction arising under covenant—

Application by original covenantor—Covenant not running with land—Covenant merely binding covenantor personally—Covenant with vendor of plot of land not to erect any fence around covenantor's front garden—Whether restriction under covenant affecting land—Law of Property Act 1925, s 84(1)(as amended by the Law of Property Act 1969, s 28). **Shepherd Homes Ltd v Sandham (No 2)** [1971] 2 1267, ChD.

Leasehold—

Injury to landlord—Loss of power to exact rent in return for modification—Restrictive covenant re-imposed on grant of licence (but subject thereto) less than 25 years before application—Law of Property Act 1925, s 84(1)(c) (12)—Landlord and Tenant Act 1954, s 52. **Ridley v Taylor** [1965] 2 51, CA.

RESTRICTIVE COVENANT AFFECTING LAND (cont)

Discharge or modification (cont)—

Leasehold (cont)—

Term of more than seventy years, after the expiration of fifty years of the term—How calculated—Date of lease or date from which term expressed to run—Law of Property Act 1925, s 84(12). *Cadogan v Guinness* [1936] 2 29, ChD.

Question of law arising on application—

Adjournment to court—Award conditional on objectors establishing right to sue—Law of Property Act 1925, s 84. *Re Spencer Flats Ltd* [1936] 2 1392, ChD.

Jurisdiction of tribunal—Difficult point of law—No general rule that tribunal should refrain from resolving difficult points of law—Decision of tribunal open to challenge in courts. *Shepherd Homes Ltd v Sandham (No 2)* [1971] 2 1267, ChD.

Status of covenantee—

National Trust—National Trust not possessed of land in locality—Statutory power of enforcement—Nature of deemed capacity of National Trust as if covenant for benefit of adjacent land—Custodians of natural beauty of land—Whether other grounds of opposing modification sufficient—National Trust Act 1937, s 8. *Gee v National Trust for Places of Historic Interest or Natural Beauty* [1966] 1 954, CA.

Stay of proceedings in action to enforce covenant by injunction—

Conditions of granting stay—Undertaking by defendants—Cross-undertaking by plaintiffs—Building scheme limiting density of building on neighbouring land—Development of land by defendants exceeding permitted density—Law of Property Act 1925, s 84(9). *Hanning v Gable-Jeffreys Properties Ltd* [1965] 1 924, ChD.

What must be shown—

Change in character of property or neighbourhood—Private owners—High class residential neighbourhood—Law of Property Act 1925, s 84—RSC Ord 54D, rr 1, 2, 3, 8. *Re Henderson's Conveyance* [1940] 4 1, ChD.

Obsolete restrictions—Building estate—Covenants imposed in 1898 with object of preserving estate as residential area—Covenant prohibiting trade of innkeeper to be carried on on the land—Some change in character of part of estate—Serious injury to persons entitled to benefit of covenant, if covenant discharged—Whether covenant 'obsolete'—Law of Property Act 1925, s 84(1)(a). *Re Truman, Hanbury, Buxton & Co Ltd's Application* [1955] 3 559, CA.

Obsolete restrictions—Impeding reasonable user of land—Large houses to be used only as private dwelling-houses save with written consent of lessor—Most houses in district converted into flats or guest houses—Lessor willing to consent to change of user subject to preserving residential character of neighbourhood—Discretion of Lands Tribunal—Law of Property Act 1925, s 84(1). *Driscoll v Church Comrs for England* [1956] 3 802, CA.

Residential area—Covenants imposed in 1908 and 1945 to use premises as private dwelling-house only—No change of character of neighbourhood—Proposed use as convalescent home for employees of owner—Law of Property Act 1925, s 84(1)(a), (6c). *Re Ghey and Galton's Application* [1957] 3 164, CA.

Enforceability—

Conveyances of estate to purchasers in parcels—

Covenants by purchasers to observe restrictions designed to maintain nature of estate—Covenant by vendor in each conveyance that same restrictions would be imposed on future purchasers—Common interest and common benefit—Conveyances equivalent to deeds of mutual covenant—Whether covenants enforceable by and against successors in title to original purchasers. *Re Dolphin's Conveyance* [1970] 2 664, ChD.

Covenant capable of benefiting land—

Estate owner reasonably taking view that covenant for benefit of his land—Others reasonably taking view that benefit of covenant spent—Whether covenant enforceable. *Wrotham Park Estate Company v Parkside Homes Ltd* [1974] 2 321, ChD.

Requisitioned land at date of covenant by purchaser—

Compulsory purchase of land by government department subsequently, subject to restrictive covenant—Restrictive covenant limiting use to agricultural use—Land acquired as reserve airfield in emergency—Occupation of land meanwhile by industrial company, under licence from Air Ministry—Land preserved by company as an airfield but used by company for industrial activities as well as for purposes of Air Ministry—Whether restrictive covenant enforceable. *Marten v Flight Refuelling Ltd* [1961] 2 696, ChD.

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Leasehold—

Merger of term—Covenant by lessor in lease binding land other than that demised—Lessee's successors in title acquired freehold reversion and merged term—Present owner of land burdened by covenant was not party to the merger but acquired land with knowledge of the covenant—Whether restrictive covenant still binding in equity notwithstanding merger. *Golden Lion Hotel (Hunstanton) Ltd v Carter* [1965] 3 506, ChD.

Implication of covenant—

Restrictions referred to in habendum but no covenant taken—

Subsequent conveyance without reference to covenants—No certainty as to parties to covenant or as to land to be benefited. *Re Rutherford's Conveyance* [1938] 1 495, ChD.

Inducement to commit breach of covenant—

Tort. *See* Tort (Inducement to commit breach of contract—Restrictive covenant).

Landlord and tenant. *See* Landlord and tenant (Restrictive covenant).

Notice—

Registered land. *See* Land registration (Notice—Notice of restrictive covenant).

RESTRICTIVE COVENANT AFFECTING LAND (cont)

Notice of covenant—

Tenants precluded from inquiring into lessor's title. *See* **Landlord and tenant** (Covenant—Notice of covenant)—Tenant precluded from inquiring into lessor's title—Notice of restrictive covenants).

Registered land—

Rectification of register—

Date from which rectification effective. *See* **Land registration** (Rectification of register—Date from which rectification effective—Effect on dispositions before date of rectification—Restrictive covenant).

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Trade—

Covenant against trade—

Jobbing builder. **Westripp v Baldock** [1939] 1 279, CA.

Uncertainty—

Limits of prohibition in covenant impossible to ascertain—

Restriction of matters 'which shall injure prejudice affect or destroy the natural aspect and condition of the land'—Whether covenant void for uncertainty. **National Trust for Places of Historic Interest or Natural Beauty v Midlands Electricity Board** [1952] 1 298, ChD.

RESTRICTIVE TRADE PRACTICES

Agreement—

New agreement—

Test whether new agreement is 'to the like effect' to another agreement in respect of restrictions declared to be contrary to the public interest—Effect—Test to be applied where court has given reasoned judgment on reference of original agreement—Restrictive Trade Practices Act 1956, s 20(3). **Re Black Bolt and Nut mssn of Great Britain's Agreement (No 2)** [1962] 1 139, CA.

Test whether new agreement is 'to the like effect' to another agreement in respect of restrictions declared to be contrary to the public interest—Original agreement compelled preponderant purchaser of large transformers to pay prices dictated by suppliers—New agreement to effect bargain between preponderant customer for large transformers and manufacturers thereof as to allocation of orders and prices to be paid—Restrictive Trade Practices Act 1956, s 20(3)(b). **Re Associated Transformer Manufacturers' Agreement (No 2)** [1971] 1 409, RPC.

Registration. *See* Registration of agreement, *post*.

Appeal to Court of Appeal by way of case stated—

Application after judgment for judgment to be amplified or amended—

Application for judgment to be amplified to include reference to evidence before court—Refusal. **Re National Federation of Retail Newsagents, Booksellers and Stationers' Agreement (Nos 3 and 4)** [1971] 2 514, CA.

Function of application—Restrictive Practices Court Rules 1957 (S I 1957 No 603), r 81 (as amended by Restrictive Practices Court (Amendment) Rules 1962 (S I 1962 No 2705), r 2). **Re National Federation of Retail Newsagents, Booksellers and Stationers' Agreement (No 4)** [1971] 2 493, RPC.

Nature of application—Whether application interlocutory—Restrictive Trade Practices Act 1956, Schedule, paras 7 and 8—Restrictive Practices Court Rules 1957 (S I 1957 No 603) rr 48, 81. **Re National Federation of Retail Newsagents, Booksellers and Stationers' Agreement (No 4)** [1970] 1 289, RPC.

Jurisdiction of Court of Appeal—

Documents—Whether court entitled to look at documents before Restrictive Practices Court but not referred to in judgment. **Re National Federation of Retail Newsagents, Booksellers and Stationers' Agreement (Nos 3 and 4)** [1971] 2 514, CA.

Contempt of court—

Acts amounting to contempt of court—

Proceedings no longer pending—Subsequent victimisation of witness—Witness removed from office—Whether removal constituted a contempt of court. **Attorney-General v Butterworth** [1962] 3 326, CA.

Publication of matter tending to interfere with due course of justice in proceedings before court. **Re The Cement Makers' Federation's Agreement** [1961] 2 75, RPC.

Breach of undertaking given to the court—

Concerted action with regard to prices and discounts—Exchanges of advance information as to price changes—Statements of fact on behalf of respondents, including statements by way of mitigation, to be supported by evidence—Nature of punishment. **Re Galvanized Tank Manufacturers' Association's Agreement** [1965] 2 1003, RPC.

Undertaking not to enter into any arrangement to the like effect as former agreement in respect of restrictions rendered void with reference to court—Former agreement superseded by new rate notification scheme, which was in part permissive—No agreement amongst member companies that they would all operate the new scheme, but each soon aware that others were doing so—Whether an 'arrangement'—Whether to 'the like effect' as original agreement—Whether contempt of court—Legal advice as mitigation of contempt. **Re Agreement of the Mileage Conference Group of the Tyre Manufacturers' Conference Ltd** [1966] 2 849, RPC.

Court—

Contempt of court—

Committal—Appeal against committal—Notice of Appeal—Service. *See* **Contempt of court** (Committal—Appeal against committal—Notice of appeal—Service—Restrictive Practice Court).

RESTRICTIVE TRADE PRACTICES (cont)

Court (cont)—

Contempt of court (cont)—

Committal—Order—Execution. *See* **Contempt of court** (Committal—Order—Execution—Restrictive Practices Court).

Evidence—

Answers to questionnaire sent out by trade association—Discretion of court to admit as evidence. *Re* **The Cement Makers' Federation's Agreement** [1961] 2 75, RPC.

Cross-examination of witnesses—When proofs of witnesses to be treated as evidence in the case. *Re* **The Yarn Spinners' Agreement** [1959] 1 299, RPC.

Evidence of opinion by trade witnesses. *Re* **The Agreement between the members of the Chemists' Federation** [1958] 3 448, RPC.

Exchange of proofs—Supply of proofs for court—Confirmation in evidence-in-chief—Additions to proofs. *Re* **Associated Transformer Manufacturers' Agreement** [1961] 2 233, RPC.

Exchange of proofs—Time. *Re* **Permanent Magnet Assn's Agreement** [1962] 2 775, RPC.

Hearing in camera. *Re* **British Bottle Assn's Agreement** [1961] 2 208, RPC.

Interlocutory applications—

Consent orders. *Practice Direction* [1958] 3 681, RPC.

Discovery. *Re* **the agreement between the members of the Chemists' Federation** [1958] 3 448, RPC.

Documentary evidence in lieu of calling witnesses. *Re* **the agreement between the members of the Chemists' Federation** [1958] 3 448, RPC.

Exchange of statements of witnesses etc. *Re* **the agreement between the members of the Chemists' Federation** [1958] 3 448, RPC.

Particulars. *Re* **the agreement between members of the Chemists' Federation** [1958] 3 448, RPC.

Time—Applications for extension or abridgment of time—Restrictive Practices Court Rules 1957 (S I 1957 No 603), r 49. *Practice Direction* [1957] 3 439, RPC.

Jurisdiction—

Alteration after date of reference—Overseas trading restrictions severed from home trading restrictions and embodied in new document—Discretion of court to deal with overseas trading restrictions—Restrictive Trade Practices Act 1956, ss 8(8), 20. *Re* **Federation of British Carpet Manufacturers' Agreement**, *Re* **Federation of British Carpet Manufacturers' Common Form Agreement** [1960] 1 356, RPC.

Discovery—Purpose of discovery to show existence of suspected unwritten arrangement—Jurisdiction of court on a reference was to consider written agreement referred to it—Original agreement admitted to contain a restriction but subsequently varied—Variation prohibiting arrangement that constituted restriction but otherwise bearing similarity to former clause containing restriction—Whether discovery should be granted. *Re* **Association of Crane Makers' Agreement** [1965] 2 561, CA.

Termination of agreement before reference—Restrictive Trade Practices Act 1956, ss 1(2), 20(1) (3) (5). *Associated Newspapers Ltd v Registrar of Restrictive Trading Agreements* [1964] 1 55, HL.

Power to make declaration—

Admission of registrable restriction—Whether declaration made on admissions. *Re* **Birmingham Association of Building Trades Employers' Agreement** [1963] 2 385, RPC.

No other relief sought—Discretion. *Re* **Associated Transformer Manufacturers' Agreement** (No 2) [1971] 1 409, RPC.

Power where agreement terminated or varied—Past restrictions—Whether declaration as to past restrictions would be made—Restrictive Trade Practices Act 1956, s 20(5). *Re* **the agreement between the members of the Federation of Wholesale and Multiple Bakers (Great Britain and Northern Ireland)** [1960] 1 227, RPC.

Power to order examination on oath—

Examination of directors, manager, secretary or other officer of body corporate—Manager—Other officer—Whether including local managers of nation-wide organisations—Restrictive Trade Practices Act 1956, s 15(3). *Registrar of Restrictive Trading Agreements v W H Smith & Son Ltd* [1969] 3 1065, CA.

Examination of director, manager, secretary or other officer of body corporate—Reasonable cause to believe restrictive agreement made—Restrictive Trade Practices Act 1956, s 15(3). *Registrar of Restrictive Trading Agreements v W H Smith & Son Ltd* [1969] 3 1065, CA.

Practice—

Agreed statement defining main issues. *Re* **Distant Water Vessels Development Scheme** [1966] 3 897, RPC.

Appearance—Body corporate—Solicitor—Restrictive Practices Court Rules 1957 (S I 1957 No 603), r 90—Restrictive Practices Court (Resale Prices) Rules 1965 (S I 1965 No 236), rr 16, 37. *Practice Direction* [1966] 1 581, RPC.

Definition of real issue with a view to reducing the volume of evidence. *Re* **The Agreements between the Members of the Locked Coil Ropemakers' Association, the Mining Rope Association, and the Wire Rope Manufacturers' Association** [1965] 1 382, RPC.

Interlocutory applications. *See* Court—Interlocutory applications, *ante*.

Pleading—Facts and matters in relation to foreign countries—Issue intended to be raised should be shown on pleadings. *Re* **Chocolate and Sugar Confectionery Resale Price Reference** [1967] 3 261, RPC.

Representation order—Applications for representation orders by members of trade associations—Restrictive Practices Court Rules 1957 (S I 1957 No 603), r 49. *Practice Direction* [1957] 2 843, RPC.

Service of order—Service of order by post and not by personal service—Recorded delivery service. *Re* **Wholesale Confectioners' Alliance of Great Britain and Northern Ireland's Agreement** (No 2) [1961] 2 8, RPC.

RESTRICTIVE TRADE PRACTICES (cont)

Court (cont)—

Practice (cont)—

Statement of case—Agreed amendment—Procedure. **Re The Agreement between the Members of the Reinforcement Conference** [1961] 2 820, RPC.

Statement of case—Late delivery—Unreasonable delay—Costs—Restrictive Practices Court Rules 1957 (S I 1957 No 603), rr 76, 77. **Re Wire Nails Manufacturers' Agreement** [1961] 2 342, RPC.

Statement of case—Need for statement of case to identify admitted restrictions and give particulars—Answer should identify and further alleged restrictions—Reply should give particulars of any such further restrictions admitted—Restrictive Practices Court Rules 1957 (S I 1957 No 603), r 18—Restrictive Trade Practices Act 1956, s 20(1). **Practice Direction** [1958] 3 520, RPC.

Uncontested case—Notification by respondents that they will not contest proceedings—Declaration by court that restrictions contrary to public interest—Restrictive Practices Court Rules 1957 (S I 1957 No 603), as amended by Restrictive Practices Court (Amendment) Rules 1965 (S I 1965 No 22), r 64A. **Re Agreement between Coventry Newspapers Ltd and Birmingham Post and Mail Ltd** [1965] 1 963, RPC.

Undertaking—Variation—Proposed recommendations by trade associations to members of terms and conditions of home trade—Recommendation by Registrar to Board of Trade that terms and conditions are of no substantial economic significance—Release from undertakings to extent necessary to make recommendations of terms, etc, to traders—Restrictive Trade Practices Act 1956, ss 12, 20(3). **Re The Yarn Spinners' Agreement (No 2), Re The Cotton Yarn Doublers' Assn's Agreement (No 2)** [1960] 3 809, RPC.

European Economic Community. *See* **European Economic Community** (Restrictive trade practices).

Interference with trade—

Tort. *See* **Tort** (Interference with trade—Unlawful means—Restrictive trade practice).

Justification of restriction—

Maintenance of another restriction—

Black Bolt and Nut Association of Great Britain—Price list for ordinary users upheld but separate price fixing machinery for large users condemned on earlier reference—Maintenance of approved ordinary user restriction impossible without supplementation—New agreement applying to large users—Whether new restriction for large users was reasonably required for maintenance of ordinary user restrictions—Restrictive Trade Practices Act 1956, s 21(1)(g). **Re Black Bolt and Nut Association of Great Britain's Agreement (No 3)** [1966] 1 220, RPC.

Necessity to negotiate fair terms—

Lack of proof that existing terms unfair—Boycotts by retail newsagents of daily newspaper—Whether reasonably necessary to negotiate fair terms—Restrictive Trade Practices Act 1956, s 21(1)(d). **Re National Federation of Retail Newsagents, Booksellers and Stationers' Agreement (No 3)** [1969] 3 97, RPC.

Maintenance of exports—Wire Rope Associations—Division of 'goods' for purposes of negotiating fair terms with preponderant buyer—Agreements to charge common prices—Whether division of 'goods' or of 'trade or business' commercially sensible—Reduction in export business—Restrictive Trade Practices Act 1956, s 21(1)(b)(d)(f). **Re The Agreements between the Members of the Locked Coil Ropemakers' Association, The Mining Rope Association, and the Wire Rope Manufacturers' Association** [1965] 1 382, RPC.

Supply of goods—National Federation of Retail Newsagents, Booksellers and Stationers—Category of 'goods' for purposes of negotiating fair terms with preponderant seller—New periodical brought out by publishers—Recommendations by federation that members should not buy on terms proposed by publishers—Whether periodical was a distinct category of 'goods' differing from others for a similar public published by the same publishers—Restrictive Trade Practices Act 1956, s 21(1)(d). **Re National Federation of Retail Newsagents, Booksellers and Stationers' Agreement** [1965] 2 417, RPC.

Supply of goods—Sulphuric Acid Association—Common buying and shipping pool—Preponderant foreign supplier—Common prices imposed by pool—Restrictions on purchase from other sources—Restrictions on use and re-sale—Need of combination for negotiating 'fair terms' for the supply of goods—Foreign combine controlling 'preponderant part' of business of supply—Restrictive Trade Practices Act 1956, s 21(1)(d)(g). **Re National Sulphuric Acid Association Ltd's Agreement** [1963] 3 73, RPC.

Trade or business—Preponderant part—Whether certain daily newspaper controlled a preponderant part of the trade or business—Restrictive Trade Practices Act 1956, s 21(1)(d). **Re National Federation of Newsagents, Booksellers and Stationers' Agreement (No 3)** [1969] 3 97, RPC.

Protection of public against injury—

Specific and substantial benefit to public—Chemists' Federation—Restriction on sale of medicines except through retail chemists—Code of Standards worked by federation—Another code of advertising standards in existence—Whether restriction 'reasonably necessary'—Whether removal of restriction would deny public substantial benefit—Restrictive Trade Practices Act 1956, s 21(1)(a)(b). **Re The Agreement between the Members of the Chemists' Federation** [1958] 3 448, RPC.

Specific and substantial benefit to public—Motor vehicles distribution scheme—Price fixing scheme—Fixed retail prices—Condition as to appointing distributors of vehicles—Fixed discounts—Introductory commission—Sales to fleet users—Whether restrictions 'reasonably necessary'—Whether removal of restrictions would deny public substantial benefit—Restrictive Trade Practices Act 1956, s 21(1)(a)(b). **Re The Motor Vehicles Distribution Scheme Agreement** [1961] 1 161, RPC.

RESTRICTIVE TRADE PRACTICES (cont)

Justification of restriction (cont)—

Protection of public against injury (cont)—

Tyre trade—Car tyres and giant tyres supplied as replacements—Register of traders providing specified facilities for the fitting of tyres—Agreement not to offer or supply tyres at price reduced by trade terms to non-registered traders—Agreement not to offer or supply tyres at price reduced by trade terms to registered traders except in respect of types of tyre for which registered—Whether restriction reasonably necessary to protect public against injury by accidents resulting from tyre failures—Restrictive Trade Practices Act 1956, s 21(1)(a). **Re Tyre Trade Register Agreement Re Staffordshire Motor Tyre Co Ltd's Agreement** [1963] 1 890, RPC.

Specific and substantial benefit to public—

Blanket Manufacturers' Association—Minimum price scheme—Minimum substance restriction—Restrictions as to terms of sale—Whether removal of restrictions would deny public substantial benefit—Restrictive Trade Practices Act 1956, s 21(1)(b). **Re Blanket Manufacturers' Assn's Agreement** [1959] 2 1, RPC.

Bread price restriction—Scottish Bakers' Associations—Agreements not to sell except at prices recommended by Associations—Whether removal of restriction would deny public substantial benefit—Restrictive Trade Practices Act 1956, s 21(1)(b). **Re Scottish Assn of Master Bakers' Agreement, Re Wholesale and Retail Bakers of Scotland Assn's Agreement** [1959] 3 98, RPC.

Bread price restriction—Wholesale and Multiple Bakers (Great Britain and Northern Ireland) Federation—Agreement not to sell at retail prices higher than those recommended by Federation—Whether removal of restriction would deny public substantial benefit—Restrictive Trade Practices Act 1956, s 21(1)(b). **Re the agreement between the Members of the Federation of Wholesale and Multiple Bakers (Great Britain and Northern Ireland)** [1960] 1 227, RPC.

British Bottle Association—Minimum price scheme—Apprehended 'price war'—Ancillary restriction involving exemption from liability to purchasers for injury from goods sold—Whether removal of restrictions would deny public as purchasers substantial benefit—Whether purchasers of filled bottles or only wholesalers or purchasers of bottles for filling were included in that public—Restrictive Trade Practices Act 1956, s 21(1)(b). **Re British Bottle Assn's Agreement** [1961] 2 208, RPC.

Building trades' association—Standard forms of contract—Bills of quantities—Daywork charges—Recommendations and rules of association concerning use of forms, against tendering for contracts without bills of quantities, against submitting priced bills of quantities with tenders, and for use of standard schedules of daywork charges—Whether removal of restrictions would deny public substantial benefit—Restrictive Trade Practices Act 1956, s 21(1)(b). **Re Birmingham Association of Building Trades Employers' Agreement** [1963] 2 361, RPC.

Cement price fixing scheme—Merchants' margins—Rebates to user-purchasers and merchant-purchasers—Special rebates to cement asbestos manufacturers—Delivery of cement to be on a day-to-day basis of price—Quotations and contracts for supply of cement other than for specific job not to be made for period exceeding twelve months—Undertaking by merchants to re-sell at prices and on standard conditions as notified—Whether removal of main price fixing restriction would deny public substantial benefit—Whether other restrictions validated by validity of main restriction—Restrictive Trade Practices Act 1956, s 21(1)(b). **Re The Cement Makers' Federation's Agreement** [1961] 2 75, RPC.

Co-operative societies—Boundary agreement—Agreement by two societies not to canvass or solicit customers or deal in or supply goods or open any shop on other side of demarcation line—Whether removal of restrictions would deny public substantial benefit—Restrictive Trade Practices Act 1956, s 21(1)(b). **Re Doncaster Co-operative Society Ltd's and Retford Co-operative Society Ltd's Agreement** [1960] 3 541, RPC.

Distant water fishermen—Fixing of reserve prices at port auctions—Whether necessary to prevent fall in prices and consequent reduction in catching capacity—Whether specific and substantial benefit to public as purchasers of white fish—Restrictive Trade Practices Act 1956, s 21(1)(b). **Re Distant Water Vessels Development Scheme** [1966] 3 897, RPC.

Finance Houses Association—Hire-purchase of motor vehicles—Restriction of interest rates, commission to dealers, minimum down-payments, maximum hiring periods—Restrictive Trade Practices Act 1956, s 21(1)(b). **Re Finance Houses Association Ltd's Agreement** [1965] 3 509, RPC.

Maintenance of another restriction—Black Bolt and Nut Association of Great Britain—Minimum fixed price scheme—Discounts—Inter-trading between members—Obligation not to supply goods to government departments, railways, harbour boards or other large users at prices lower than lowest proposed quotation reported by any member to secretary of Association—Whether removal of restrictions would deny public substantial benefit—Whether restrictions reasonably required for purposes connected with maintenance of other restrictions accepted by parties—Restrictive Trade Practices Act 1956, s 21(1)(b)(g). **Re Black Bolt and Nut Assn of Great Britain's Agreement** [1960] 3 122, RPC.

Maintenance of another restriction—Maintenance of exports—Permanent magnets—Minimum price fixing scheme—Technical pooling agreement—Research organisation established for all members—Benefit derived from research and price reductions passed to consumer—Whether removal of restrictions would 'deny' public substantial benefit 'resulting from' restrictions—Whether removal of restrictions would be likely to cause substantial reduction in volume of earnings of permanent magnet export business in relation to whole business of permanent magnet industry—Discounts to large buyers—New magnetic material not to be marketed except subject to approved terms—Whether restrictions reasonably required for purposes connected with maintenance of other restrictions accepted by parties—Restrictive Trade Practices Act 1956, s 21(1)(b)(f)(g). **Re Permanent Magnet Assn's Agreement** [1962] 2 775, RPC.

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Agreement for the supply of goods—Agreements between motor manufacturers and dealers—Bipartite agreements substituted for former multipartite agreements—Whether former agreements to be taken into consideration in interpreting new agreements—**Restrictive Trade Practices Act 1956, ss 6(3), 7(2), 8(3). Re Austin Motor Co Ltd's Agreements [1957] 3 62, ChD.**

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Agreement not to offer to supply goods in response to an invitation to tender until after discussions with other persons invited to tender—Whether a restriction in respect of the prices to be quoted—Whether a registrable agreement—Restrictive Trade Practices Act 1956, s 6(1)(a). **Re Electrical Installations at Exeter Hospital Agreement [1971] 1 347, RPC.**

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Exception—Restriction relating exclusively to goods supplied—Agreement by producer of citrus fruit drink concentrates to buy from another producer specified percentage of concentrates each year—Purchasing producer agreeing to compensate other producer if less than specified percentage ordered—Whether producer accepting restriction on production—Whether restriction relating exclusively to goods supplied—Restrictive Trade Practices Act 1956, ss 6(1)(3)(4), 7(2), 8(3). **Re Cadbury Schweppes Ltd's Agreement [1975] 2 307, RPC.**

Restriction on production, supply or acquisition of goods—

Negative obligation implied from positive clause—Marketing company owned by eight steel manufacturers—Agreements with own members—Undertaking by marketing company to acquire members' basic slag and apportion sales fairly between them—No obligation on marketing company to acquire more basic slag than it could dispose of—Implied restriction on purchase from other members—Restrictive Trade Practices Act 1956, s 6(1)(c). **Re British Basic Slag Ltd's Agreements [1963] 2 807, CA.**

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Continuance of terms of trading—Resolution after date of reference for continuance by individual arrangements—Whether resolution a recommendation within Restrictive Trade Practices Act 1956, s 6(7). **Re Federation of British Carpet Manufacturers' Agreement, Re Federation of British Carpet Manufacturers' Common Form Agreement [1960] 1 356, RPC.**

Recommendation by trade association requiring indemnity to be taken—Terms of indemnity left to individual members—Whether a specific restriction—Restrictive Trade Practices Act 1956, s 6(7). **Re Finance Houses Association Ltd's Agreement [1965] 3 509, RPC.**

Specific recommendation—Action in relation to particular class of goods—Recommendation by newsagents' federation—Recommendation to boycott particular newspaper to make stand against reduction of profit margins by proprietors—Whether recommendation in relation to 'particular class of goods' wider than the class of goods directly affected—Restrictive Trade Practices Act 1956, s 6(7). **National Federation of Retail Newsagents, Booksellers and Stationers v Registrar of Restrictive Trading Agreements [1972] 2 1269, HL.**

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Individual enforcement by legal proceedings of condition as to resale prices—

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Individual enforcement by legal proceedings of conditions as to resale prices—

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Injunction against sale by retailer below fixed price—Purchase of article by retailer before operation of statute—Whether statute having retrospective effect—Restrictive Trade Practices Act 1956, s 25(1). **Dunlop Rubber Co Ltd v Longlife Battery Depot (a firm)** [1958] 3 197, ChD.

Injunction against sale by retailer below fixed price—Retail price of soft drink listed as '2s6d plus 3d' charge, refundable, on bottle—Property in bottle not intended to pass to customer—Correct retail price of drink in bottle, 2s6d, and 3d charge for hire of bottle—Restrictive Trade Practices Act 1956, s 25(1). **Beecham Foods Ltd v North Supplies (Edmonton) Ltd** [1959] 2 336, ChD.

Injunction against sale by retailer below fixed price—Whether goods acquired with notice of the condition—Restrictive Trade Practices Act 1956, s 25(1), (4). **County Laboratories Ltd v J Mindel Ltd** [1957] 1 806, 861, ChD.

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Chocolate and sugar confectionery—Prospective price increase—Prospective disappearance of outlets for retail sales—Burden and standard of proof—Whether case for exemption of goods established—Resale Prices Act 1964, s 5(2)(a)(b)(c) and (e). **Re Chocolate and Sugar Confectionery Resale Price Reference** [1967] 3 261, RPC.

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Withholding on ground that dealer likely to sell goods below resale price—Whether withholding by suppliers on ground that dealer had advertised goods at 'cut prices' unlawful—Resale Prices Act 1964, s 2(1)(b). **Comet Radiovision Services Ltd v Farnell-Tandberg Ltd** [1971] 3 230, ChD.

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Four robbers entering shop and threatening occupants—Incident not attracting the attention of anyone outside the shop—Whether assembly 'tumultuous' as well as riotous—Whether police authority liable to pay compensation—Riot (Damages) Act 1886, s 2. *J W Dwyer Ltd v Receiver for the Metropolitan Police District* [1967] 2 1051, QBD.

Invasion of private property by crowd wishing to see football match—Riot (Damage) Act 1886, s 2(1). *Munday v Metropolitan Police District Receiver* [1949] 1 337, KBD.

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RISK (cont)

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Accident owing to presence of motor vehicle on the road. *See* **Breath test**—Accident owing to presence of motor vehicle on road, *post*.Contributory negligence. *See* **Negligence** (Contributory negligence—Road accident).

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Accident owing to presence of vehicle on road—Passenger falling from omnibus—Omnibus not at authorised stopping place—Whether an accident 'owing to the presence of a motor vehicle on a road'—Road Traffic Act 1930, s 22(1). *Quelch v Phipps* [1955] 2 302, QBD.Damage to stone wall and to vehicle—Whether damage or injury to any person, vehicle or animal—Road Traffic Act 1930, s 22. *Paget v Mayo* [1939] 2 362, KBD.Driver—Vehicle stationary at time of accident—Driver person who takes vehicle out—Remaining driver until journey finished—Road Traffic Act 1930, s 22(2). *Jones v Prothero* [1952] 1 434, QBD.Driver's obligation to remain where he has stopped—Accident causing damage to another vehicle—For what period of time driver should remain where he has stopped—Duty personally to give information that may be required—Road Traffic Act 1960, s 77(1). *Lee v Knapp* [1966] 3 961, QBD.Ignorance of driver that accident has occurred—Whether mens rea essential to offence of failing to stop—Road Traffic Act 1930, s 22(2). *Harding v Price* [1948] 1 283, KBD.Report to police—Motor car struck by motor cycle—Driver of car giving name and address to driver of motor cycle—Whether driver under obligation to report to police—Road Traffic Act 1930, s 22(1),(2). *Green v Dunn* [1953] 1 550, QBD.Request by authorised person—Duty to report to police—Child injured—No request by authorised person for driver's name and address at time of accident—Obligation on driver to report to police within 24 hours—Road Traffic Act 1930, s 22(1),(2). *Peek v Towle* [1945] 2 611, KBD.

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ROAD TRAFFIC (cont)

Arrest (cont)—

Request for specimen for laboratory test—

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Requirement to provide specimen for laboratory test—

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Articulated vehicle—

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Articulated vehicle with two platforms for carrying cars—When three cars carried on upper platform, lifting gear not raised to vertical position and permitted overall length exceeded—Road Traffic Act 1960, s 64(2)—Motor Vehicles (Construction and Use) Regulations 1955 (S I 1955 No 482), reg 6(1). **Bason v Vipond, Same v Robson** [1962] 1 520, QBD.

Length exceeding thirteen metres—Whether normally used for conveying indivisible loads of exceptional length—Meaning of 'normally used'—Forty-six out of 177 loads carried in a period of twelve months not indivisible loads of exceptional length—Motor Vehicles (Construction and Use) Regulations 1963 (S I 1953 No 1646), reg 7(1), as amended by the Motor Vehicles (Construction and Use) (Amendment) (No 2) Regulations 1964 (S I 1964 No 1169), reg 4. **Peak Trailer & Chassis Ltd v Jackson** [1967] 1 172, QBD.

Trailer superimposed on towing vehicle—

Breakdown vehicle towing lorry—Weight taken by jib of crane on towing vehicle—No contact between breakdown vehicle and lorry—Whether an 'articulated vehicle'—Road Traffic Act 1930, s 17(2)—Motor Vehicles (Construction and Use) Regulations 1947 (S R & O 1947 No 670), reg 3. **Hunter v Towers** [1951] 1 349, KBD.

Use for unsuitable purpose—

Trailer bearing forklifts—Collision with bridge—Height of trailer and load greater than height of bridge—Whether trailer used for unsuitable purpose—Factors to be considered in determining suitability—Motor Vehicles (Construction and Use) Regulations 1969 (S I 1969 No 321), reg 76(3). **British Road Services Ltd v Owen** [1971] 2 999, QBD.

Being in charge of vehicle when unfit to drive through drink or drugs—

Circumstances such that no likelihood of driving while unfit—

Condition of vehicle—Relevance—Driver involved in collision—Vehicle damaged—Driver subsequently consuming alcohol—Driver charged with being in charge while unfit through drink—Jury directed to disregard fact that driver's vehicle might not have been capable of being driven following accident—Whether a misdirection—Road Traffic Act 1960, s 6(2)—Road Safety Act 1967, s 1(4). **R v Lawrence (Paul Anthony)** [1973] 1 364, CA.

In charge—

Driver walking towards vehicle with intention of driving—Whether 'in charge' of vehicle—Road Traffic Act 1930, s 15(1). **Leach v Evans** [1952] 2 264, QBD.

Vehicle left in public place away from home—Person leaving vehicle—Whether 'in charge' after leaving vehicle—Road Traffic Act 1930, s 15(1). **Haines v Roberts** [1953] 1 344, QBD.

No intention of driving until fit to do so—

Burden of proof—Burden on defendant of showing no likelihood of driving while he remained unfit—Road Traffic Act 1960, s 6(2)(i). **Morton v Confer** [1963] 2 765, QBD.

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Public place—Parking enclosure at rear of inn—Road Traffic Act 1930, ss 15(1), 121. **Elkins v Cartlidge** [1947] 1 829, KBD.

Validity of conviction—

Having charge of vehicle 'when under the influence of drink or drug'—Whether void for uncertainty. **Thomson v Knights** [1947] 1 112, KBD.

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Auxiliary engine fitted. *See* Motor vehicle—Dual purpose vehicle—Bicycle with auxiliary engine fitted, *post*.

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Driving while unfit through drink or drugs. *See* Driving while unfit to drive through drink or drugs—Specimen of blood or urine).

Specimen for laboratory test—

Determination of driver's blood-alcohol proportion. *See* Specimen for laboratory test to determine driver's blood-alcohol proportion—Blood, *post*.

Blood-alcohol proportion—

Breath test. *See* Breath test, *post*.

Causing death by dangerous driving—

Evidence. *See* Dangerous driving—Causing death by dangerous driving—Evidence of alcohol consumed by driver, *post*.

In charge of vehicle. *See* Being in charge of motor vehicle with blood-alcohol proportion above prescribed limit, *ante*.

Brakes—

Efficient braking system. *See* Motor vehicle—Efficient braking system, *post*.

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Breach of statutory duty—

Civil action. *See* Statutory duty (Breach of duty imposed under sanction of penalty—Competence of civil action at suit of person aggrieved).

Breath test—

Accident owing to presence of motor vehicle on road—

Accident—Unintended occurrence having an adverse physical result—Broken down car being pushed by second car—Bumpers of two cars becoming interlocked—Both vehicles slightly damaged and could not be separated—Whether an 'accident'—Road Safety Act 1967, s 2(2). **R v Morris** [1972] 1 384, CA.

AD TRAFFIC (cont)

Breath test (cont)—

Accident owing to presence of motor vehicle on road—

Issue whether accident occurred to be left to jury—Road Safety Act 1967, s 2(2). **R v Seward** [1970] 1 329, CA.

Arrest following breath test—

Accused to be told under what powers arrest made—Road Traffic Act 1960, s 6(4)—Road Safety Act 1967, s 2(1). **R v Wall** [1969] 1 968, CA.

Failure to provide specimen—Validity of arrest. *See* Breath test—Failure to provide specimen—Validity of arrest, *post*.

Form of words to be used. **Alderson v Booth** [1969] 2 271, QBD.

Necessary preliminary to provision of specimen—Road Traffic Act 1960, s 6(4)—Road Safety Act 1967, s 2(1). **Campbell v Tormey** [1969] 1 961, QBD.

Opportunity to provide further specimen—Right of person arrested to have opportunity of providing a further specimen of breath for a breath test while at police station—Whether person arrested must be taken to police station and given opportunity of providing a further specimen for breath test—Road Safety Act 1967, s 2(7). **Bourlet v Porter** [1973] 2 800, HL.

Powers under different Acts—Road Traffic Act 1960, s 6(4)—Road Safety Act 1967, s 2(4). **Director of Public Prosecutions v Carey** [1969] 3 1662, HL.

Recognition—Power of police to require accused to enter into recognisance before release from police station—Road Safety Act 1967, s 4. **R v McKenzie** [1971] 1 729, Assizes.

Device—

Evidence of approval by Secretary of State—Consignment note relating to delivery of device to police—Note not a record relating to a trade or business—Criminal Evidence Act 1965, s 1(1)(a)—Road Safety Act 1967, s 7(1). **R v Gwilliam** [1968] 3 821, CA.

Evidence of approval by Secretary of State—No evidence of approval—Effect—Road Safety Act 1967, ss 3(3), 7(1). **R v Withecombe** [1969] 1 157, CA.

Evidence of approval by Secretary of State—Oral evidence of Secretary of State's approval of breath test device—Judicial notice that device approved by Secretary of State—Formal proof no longer necessary—Road Safety Act 1967, s 7. **R v Jones (Reginald)** [1969] 3 1559, CA.

Evidence of approval by Secretary of State—Written statement signifying Secretary of State's approval of a breath test device—Oral evidence unnecessary—Criminal Justice Act 1967, s 2(1)(7). **R v Holt** [1968] 3 802, CA.

Instructions for assembly—Compliance. **Director of Public Prosecutions v Carey** [1969] 3 1662, HL.

Instructions for use—Strict compliance with instructions not essential to validity of test—Mouth alcohol—Smoking—Inflation of bag—Road Safety Act 1967, s 7(1). **Director of Public Prosecutions v Carey** [1969] 3 1662, HL.

Instructions for use—Strict compliance with instructions not essential to validity of test—Smoking—High concentration of tobacco smoke liable to affect result of test—Instructions stating that smoking should not be permitted immediately before test—Defendant having been smoking shortly before test—No evidence that smoking affected result of test—Validity of test. **Watkinson v Barley** [1975] 1 316, QBD.

Instructions for use—Strict compliance with instructions not essential to validity of test—Smoking—High concentration of tobacco smoke liable to affect result of test—Instructions stating that smoking should not be permitted immediately prior to test—Meaning of 'immediately prior to'—High concentration only likely if driver inhales through cigarette and at once exhales into bag—Sufficient compliance with instructions if driver had adequately cleared tobacco smoke from lungs before taking test. **Attorney-General's Reference (No 2 of 1974)** [1975] 1 658, CA.

Order signifying approval by Secretary of State—Production of order signifying Secretary of State's approval of a breath test device—Order—Breath Test Device Approval (No 1) Order 1968 (dated 9th February 1968)—Documentary Evidence Act 1868, s 2 (as amended by Documentary Evidence Act 1882, s 2—Road Safety Act 1967, s 7(1). **R v Clarke** [1969] 1 924, CA.

Personal approval by Secretary of State—Whether personal approval of Secretary of State necessary—Road Safety Act 1967, s 7(1). **R v Skinner** [1968] 3 124, CA.

Presumption as to approval by Secretary of State—Whether maxim omnia praesumuntur rite esse acta sufficient to establish prima facie case—Road Safety Act 1967, ss 1(1), 2(4)(7), 7(1). **Scott v Baker** [1968] 2 993, QBD.

Proof of identity of device—Road Safety Act 1967, s 7(1). **Miller v Howe** [1969] 3 451, QBD.

Duty of constable to act bona fide to obtain true indication of proportion of alcohol in blood—

Belief or knowledge that suspect had consumed alcohol in previous 20 minutes. **Director of Public Prosecutions v Carey** [1969] 3 1662, HL.

Manufacturers' instructions attached to device—Constable ignorant of instructions—Failure to comply with instructions liable to affect result of test—Constable acting bona fide—Validity of test. **Attorney-General's Reference (No 2 of 1974)** [1975] 1 658, CA.

Failure to provide specimen—

Defective equipment—Failure to give specimen owing to defective equipment—Arrest—Provision of specimen of blood at police station—Conviction for driving with blood-alcohol proportion above prescribed limit—Validity of arrest—Road Safety Act 1967, s 2(5). **Hoyle v Walsh** [1969] 1 38, QBD.

Medical condition—Failure to give specimen of breath by reason of medical condition—Medical condition amounting to reasonable excuse for failure—Arrest—Road Safety Act 1967, s 2(3)(5). **Hirst v Wilson** [1969] 3 1566, QBD.

Reasonable excuse—Bronchitic condition—Road Safety Act 1967, s 2(3). **Hirst v Wilson** [1969] 3 1566, QBD.

Specimen for laboratory test. *See* Failure to provide specimen for laboratory test, *post*.

ROAD TRAFFIC (cont)

Breath test (cont)—

Failure to provide specimen (cont)—

Validity of arrest—Belief that driver had failed to supply specimen—Reasonable ground for belief—Driver failing to inflate bag fully—Sufficient quantity of breath to produce positive reading—Constable failing to check crystals before effecting arrest—Constable believing failure to inflate bag fully constituting failure to provide specimen—Whether arrest valid—Road Traffic Act 1972, s 8(5). **Walker v Lovell** [1975] 3 107, HL.

Hospital patient—

Evidence of no objection by medical practitioner—Road Safety Act 1967, ss 2(2), 3(2)(a),(b). **R v Chapman** [1969] 2 321, CA.

Inflation of bag in requisite manner—

Failure to inflate at one breath in accordance with manufacturer's instructions—Whether test valid—Road Safety Act 1967, ss 2(4)(5), 7(3). **Rendell v Hooper** [1970] 2 72, QBD.

Provision of specimen of breath in sufficient quantity to enable test to be carried out—Failure to inflate bag fully—Sufficient quantity of breath to produce positive reading—Whether failure to provide specimen of breath—Road Safety Act 1967, ss 2(5), 7(3). **R v Holah** [1973] 1 106, CA.

Provision of specimen of breath in sufficient quantity to enable test to be carried out—Failure to inflate bag fully—Sufficient quantity of breath to produce specimen of breath—Road Traffic Act 1972, ss 8(1)(3), 12(3). **Walker v Lovell** [1975] 3 107, HL.

Inflation of bag in requisite time—

Failure to inflate as required—Whether subsequent attempt should be made—Whether offence of failing to supply specimen of breath—Road Safety Act 1967, s 2(3). **Director of Public Prosecutions v Carey** [1969] 3 1662, HL.

Instructions to suspect. **Director of Public Prosecutions v Carey** [1969] 3 1662, HL.

Mouth alcohol—

Delay on account of mouth alcohol—Suspect refusing to wait—Power of arrest—Whether guilty of failing to supply specimen for breath test—Road Safety Act 1967, s 2(3),(5). **Director of Public Prosecutions v Carey** [1969] 3 1662, HL.

Obstructing police—

Positive act not per se unlawful. *See Criminal law* (Obstructing constable in execution of his duty—Obstruction@Positive act constituting obstruction—Act not per se unlawful—Accused suspected by constable of driving with excessive quantity of alcohol in blood—Accused required to take breath test).

Person driving or attempting to drive—

Driver committing traffic offence whilst vehicle in motion—Fresh pursuit culminating in requirement to provide specimen of breath for breath test off road—Whether one single transaction—Whether as soon as reasonably practicable—Road Safety Act 1967, s 2(1)(a), (b). **Sasson v Taverner** [1970] 1 215, QBD.

Driver having stopped vehicle and got out—Driver stopped and questioned by police constable in connection with suspected offence—Suspicion of alcohol formed by constable during questioning—Whether accused driving or attempting to drive when suspicion formed—Road Safety Act 1967m s 2(1). **R v Reid (Philip)** [1973] 3 1020, CA.

Driver stopped car voluntarily—Left driving seat to make a telephone call unconnected with driving—Questioned on matter unconnected with driving—Only then asked to take breath test—Whether then driving or attempting to drive—Road Safety Act 1967, s 2(1)(a). **R v Kelly** [1970] 2 198, CA.

Issue whether accused driving or attempting to drive at relevant time—Issue of fact for jury—Proper direction to jury in clear cases—Road Safety Act 1967, s 2(1). **R v Bates** [1973] 2 509, CA.

Issue whether accused was or was not driving—Primary facts not in dispute—When issue an issue of law—Road Safety Act 1967, s 2(1)(a). **R v Kelly** [1970] 2 198, CA.

Meaning—Road Safety Act 1967, s 2(1). **Pinner v Everett** [1969] 3 257, HL.

Person in driving seat—Remaining in driving seat for 20 minutes after driving ceased for discussion with passengers—Road safety Act 1967, s 2(1)(a). **Stevens v Thornborrow** [1969] 3 1487, QBD.

Question of fact for jury—Road Safety Act 1967, s 2(1)(a). **R v Jones (E J M)** [1970] 1 209, CA.

Requirement to take test—Requirement after person ceasing to drive—Requirement need not be contemporaneous with driving or attempting to drive—Requirement to be made as soon as possible thereafter—Driving and requirement must form part of continuous sequence of events—Road Safety Act 1967, s 2(1). **Sakhuja v Allen** [1972] 2 311, HL.

Suspicion of alcohol—Reasonable cause to suspect alcohol—Suspicion arising when person driving or attempting to drive—Road Safety Act 1967, s 2(1)(a). **Pinner v Everett** [1969] 3 257, HL.

Suspicion of alcohol—Reasonable cause to suspect person has alcohol in body—Suspicion arising after person has ceased driving—Whether necessary that suspicion should be contemporaneous with driving or attempted driving—Road Traffic Act 1967, s 2(1). **Sakhuja v Allen** [1972] 2 311, HL.

Suspicion of alcohol or of commission of moving traffic offence—Suspicion arising after person has ceased driving—Whether necessary that suspicion should arise at time person driving—Considerations to be taken into account in determining whether person driving at relevant time—Road Safety Act 1967, s 2(1). **Edkins v Knowles** [1973] 2 503, QBD.

Requirement to take test—

As soon as reasonably practicable after commission of offence—Matter of degree and fact for justices—Road Safety Act 1967 s 2(1). **Arnold v Chief Constable of Kingston-upon-Hull** [1969] 3 646, QBD.

As soon as reasonably practicable after commission of offence—Person driving a motor vehicle—Road Safety Act 1967, s 2(1). **R v Price** [1968] 3 814, CA.

As soon as reasonably practicable after commission of offence—Person no longer driving a motor vehicle. **Campbell v Tormey** [1969] 1 961, QBD.

ROAD TRAFFIC (cont)

Breath test (cont)—

Requirement to take test (cont)—

Communication of requirement—Words constituting requirement spoken by constable in honest and reasonable belief that they were being heard and understood by driver—Whether prosecution must prove that driver understood requirement—Road Safety Act 1967, s 3(2)(b). **R v Nicholls** [1972] 2 186, CA.

Person driving or attempting to drive. *See* Breath test—Person driving or attempting to drive—Requirement to take test, *ante*.

Provision of specimen there or nearby—Matter of degree and fact for justices—Road Safety Act 1967, s 2(1). **Donegani v Ward** [1969] 3 636, QBD, **Arnold v Chief Constable of Kingston-upon-Hull** [1969] 3 646, QBD.

What constitutes requirement—Road Safety Act 1967, s 2(1). **R v Clarke** [1969] 2 1008, CA.

When requirement may be made off road—Road Safety Act 1967, s 2(1)(b). **R v Jones (E J M)** [1970] 1 209, CA.

Second breath test—

Suspect taking first breath test at police station—Whether suspect entitled to insist on second breath test at same station—Road Safety Act 1967, s 2(7). **Rooney v Houghton** [1970] 1 1001, QBD.

Smoking before or during test—

Delay on account of smoking. **Director of Public Prosecutions v Carey** [1969] 3 1662, HL.

Suspicion of alcohol. *See* Breath test—Person driving or attempting to drive—Suspicion of alcohol, *ante*.

Validity—

Failure to provide specimen for laboratory test. *See* Failure to provide specimen for laboratory test—Validity of breath test, *post*.

Breathalyser. *See* Breath test—Device, *ante*.

Built-up area—

Speeding. *See* Excessive speed—Built-up area, *post*.

Bus—

Stage carriage. *See* Stage carriage, *post*.

Cab—

Hackney carriage. *See* Hackney carriage, *post*.

Car park—

Road. *See* Road—Car park, *post*.

Careless driving—

Due consideration for other persons using road—

Passengers in vehicle—Whether passengers are 'other persons using the road'—Road Traffic Act 1960, s 3(1). **Pawley v Wharldall** [1965] 2 757, QBD.

Error of judgment—

Lack of care caused by error of judgment—Whether driving without due care and attention—Road Traffic Act 1930, s 12(1). **Simpson v Peat** [1952] 1 447, QBD.

Evidence—

Identity of driver—Circumstantial evidence sufficient to identify defendant as driver of vehicle involved in accident. **Hampson v Powell** [1970] 1 929, QBD.

Identification of lorry causing accident between two cars—Number of lorry reported to police by independent witness—Independent witness unable at trial to remember number of lorry—Police evidence identifying accused as driver of lorry of a particular number but inadmissible as hearsay to identify lorry of that number as having caused the accident. **Jones v Metcalfe** [1967] 3 205, QBD.

Identity of driver—Circumstantial evidence sufficient to identify defendant as driver of vehicle involved in accident. **Hampson v Powell** [1970] 1 929, QBD.

Inexperience—

Lack of skill due to inexperience—Driver exercising all the skill and attention to be expected from person with his short experience—Road Traffic Act 1930, s 12. **McCrone v Riding** [1938] 1 157, KBD.

Carriage of goods—

Hire or reward—

Goods vehicle. *See* Goods vehicle—Carriage of goods for hire or reward, *post*.

Carrier's licence—

Goods vehicle. *See* Goods vehicle—Carrier's licence, *post*.

Causing dangerous vehicle to be on road. *See* Dangerous vehicle—Causing dangerous vehicle to be on road, *post*.

Causing death by dangerous driving. *See* Dangerous driving—Causing death by dangerous driving, *post*.

Causing vehicle to be used on road in breach of regulations. *See* Motor vehicle—Causing vehicle to be used on road in breach of regulations, *post*.

Chassis—

Motor tractor. *See* Motor tractor—Chassis, *post*.

Collision between vehicles—

Contributory negligence. *See* Negligence (Contributory negligence—Collision between vehicles on road).

Proof of negligence. *See* Negligence (Proof of negligence—Collision between vehicles on road).

Conductor—

Stage carriage—

Offence. *See* Stage carriage—Offence by driver or conductor, *post*.

Consent—

Specimen of blood or urine—

Driving while unfit through drink or drugs. *See* Driving while unfit to drive through drink or drugs—Specimen of blood or urine—Consent to, *post*.

ROAD TRAFFIC (cont)

Contributory negligence—

Collision between vehicles. *See* **Negligence** (Contributory negligence—Collision between vehicles on road).

Crash helmet—

Failure to wear—

Contributory negligence. *See* **Negligence** (Contributory negligence—Road accident—Crash helmet).

Dangerous driving—

Acquittal on charge of manslaughter—

Jurisdiction to try charge of dangerous driving—Whether quarter sessions having jurisdiction to try issue of dangerous driving after jury at assizes found accused not guilty of manslaughter—Road Traffic Act 1934, s 34. **R v Shipton**, *ex parte Director of Public Prosecutions* [1957] 1 206, QBD.

Autrefois acquit—

Acquittal of manslaughter. *See* **Criminal law** (Autrefois acquit—Manslaughter—Acquittal—Dangerous driving).

Causing death by dangerous driving—

Causing—Substantial cause—Dangerous driving must be a substantial cause, but not necessarily the sole substantial cause, of death—Road Traffic Act 1960, s 1. **R v Gould** [1963] 2 847, Assizes.

Causing—Substantial cause—Sufficient to show that dangerous driving was a cause of the accident and something more than *de minimis*—Road Traffic Act 1960, s 1. **R v Hennigan** [1971] 3 133, CA.

Evidence of alcohol consumed by driver—Admissibility—Evidence of blood-alcohol concentration exceeding prescribed limit under the Road Safety Act 1967—Road Traffic Act 1960, s 1. **R v Thorpe** [1972] 1 929, CA.

Indictment—Duplicity—Indictment charging driving at a speed and in a manner dangerous to the public—Whether bad for duplicity—Road Traffic Act 1960, s 1(1). **R v Clow** [1963] 2 216, CCA.

Negligence—Manslaughter. *See* **Criminal law** (Manslaughter—Negligence—Degree of negligence—Dangerous driving of motor car).

Objective test—Degree of recklessness or carelessness immaterial—Road Traffic Act 1960, s 1(1). **R v Evans** [1962] 3 1086, CCA.

Objective test—Evidence of drink taken—Admissibility—Road Traffic Act 1960, s 1. **R v McBride** [1961] 3 6, CCA.

Scottish company charged with aiding etc offence committed in England. *See* **Criminal law** (Jurisdiction—Aiding and abetting—Causing death by dangerous driving).

Sentence—Disqualification for driving—Principles of sentencing—Categories of offences and offenders—Conviction because of momentary inattention or misjudgment—Relevance of driving record to period of disqualification—Cases in which custodial sentence appropriate. **R v Guilfoyle** [1973] 2 844, CA.

Special reasons for not disqualifying. *See* Special reasons for not disqualifying—Causing death by dangerous driving, *post*.

Defence—

Ground that offence amounted to careless driving only likely to confuse jury—Defence—Right of trial judge to stop argument directed to establishing that defence. **R v Scammell** [1967] 3 97, CA.

Mechanical defect—Knowledge—Brakes on car recently purchased then stated to have been overhauled—Brakes in fact defective—Defect known to driver—Whether defence of mechanical defect available where driver knew of defect—Road Traffic Act 1930, s 11(1). **R v Spurge** [1961] 2 688, CCA.

Excessive speed—

Potential danger—Driving not in fact dangerous to the public—Whether dangerous driving—Road Traffic Act 1930, s 11(1). **Bracegirdle v Oxley** [1947] 1 126, KBD.

Information—

Two offences in one information—Dangerous driving and driving without due care and attention—Duty of justices to see that information amended—Charge of dangerous driving only—Road Traffic Act 1930, ss 11, 12(1)—Road Traffic Act 1934, s 35. **Edwards v Jones** [1947] 1 830, KBD.

Joinder of charges. *See* **Indictment** (Joinder of charges—Road traffic offences—Dangerous driving).

Mens rea—

Automatism—Inference of automatism—Diabetic driver overcome during part of journey by effect of insulin for reasons unknown to himself—Car proceeding for five miles along road which was not straight—Car proceeding dangerously—Whether defence of automatism made out—Road Traffic Act 1960, s 2(1), s 3(1). **Watmore v Jenkins** [1962] 2 868, QBD.

Automatism—Onus of proving automatism—Whether mens rea an element of the offence—Road Traffic Act 1930, s 11(1). **Hill v Baxter** [1958] 1 193, QBD.

Fault—Offence not absolute—Fault of driver causing dangerous situation sufficient to constitute offence—Meaning of 'fault'—Failure to achieve standard of experienced and competent driver—Fault must be a cause of dangerous situation—Inference of fault from facts of situation—Driver entitled to prove special facts avoiding inference of fault—Road Traffic Act 1960, s 2(1). **R v Gosney** [1971] 3 220, CA.

Sentence—

Preventive detention—Circumstances which justify such a sentence—Protection of public. **R v Higginbotham** [1961] 3 616, CCA.

What amounts to dangerous driving—

Circumstances of case—Vehicle dangerous to public having regard to traffic which might reasonably be expected to be on road—Whether offence of dangerous driving proved—Road Traffic Act 1930, s 11(1). **Durnell v Scott** [1939] 1 183, KBD.

ROAD TRAFFIC (cont)

Dangerous vehicle—

Causing dangerous vehicle to be on road—

Repair to vehicle by garage—Owner driving vehicle after repair—Accident due to negligence of garage proprietor's workman—Liability of garage proprietor—Motor Vehicles (Construction and Use) Regulations 1951 (S.I. 1951 No 2101), reg 101. **Shave v Rosner** [1954] 2 280, QBD.

Defective tyres. *See* Tyres—Defective tyres, *post*.

Device for breath test. *See* Breath test—Device, *ante*.

Directions—

Failure to comply with direction—

Direction by constable engaged in regulation of traffic—Direction given by constable in execution of duty—Power at common law of constable to direct traffic derived from duty to protect life and property—Accused driving car on motorway—Constable directing accused to leave carriageway in order to take part in traffic census—Accused refusing to comply with constable's direction—Whether direction given by constable in execution of duty—Road Traffic Act 1972, s 22(1). **Hoffman v Thomas** [1974] 2 233, QBD.

Direction by constable engaged in regulation of traffic—Direction given by constable in execution of duty—Obstruction of constable. *See* Criminal law (Obstructing constable in execution of duty—Execution of duty—Direction to motorist to disobey traffic regulations).

Disqualification for holding licence—

Adjournment in order to enable disqualification to be imposed—

Magistrates' court—Plea of guilty notified in writing—Adjournment of case for purpose of enabling disqualification to be imposed—Notice of adjournment to give reason therefor—Magistrates' Courts Act 1952, s 14(2)—Magistrates' Courts Act 1957, s 1(2), proviso(iii),(3). **R v Mason** [1965] 2 308, Crown Ct.

Committal of offender to Crown Court—

Power to disqualify in addition to imposing sentence of Borstal training. *See* Crown Court (Committal of offender to Crown Court for sentence—Borstal training—Road traffic offence—Disqualification).

Consecutive periods—

Driving whilst uninsured—Whether period of disqualification for driving whilst uninsured can be made consecutive to previous period of disqualification—Road Traffic Act 1960, s 201—Road Traffic Act 1962, s 5(5). **Jones v Powell** [1965] 1 674, QBD.

Express statement—Duty of court to state expressly that period of disqualification is consecutive—Road Traffic Act 1962, s 5(3),(5). **R v Sixsmith (Stipendiary Magistrate), ex parte Morris** [1966] 3 473, QBD.

Driving while disqualified. *See* Driving while disqualified for holding licence, *post*.

Evidence of previous convictions—

Appeal to Crown Court—Appeal against sentence only—Offence involving obligatory endorsement—Driving licence endorsed by justices—Duty of Crown Court to order production of driving licence for endorsement—Duty of court to examine licence for purpose of determining whether disqualification should be ordered—Road Traffic Act 1972, ss 93(3), 101(4). **Dyson v Ellison** [1975] 1 276, QBD.

Certificate of disqualification—Certificate should be limited to that fact—Prevention of Crimes Act 1871, s 18. **Stone v Bastick** [1965] 3 713, QBD.

Production of driving licence—Proof of previous conviction resulting in disqualification—Whether proof should be by producing driving licence with endorsement of particulars of disqualification—Road Traffic Act 1962, s 7(1). **Stone v Bastick** [1965] 3 713, QBD.

Mitigating grounds justifying non-disqualification following previous endorsements—

Circumstances attending previous convictions—Whether evidence of circumstances attending previous convictions admissible—Road Traffic Act 1962, s 5(3). **Lambie v Woodage** [1972] 2 462, HL.

Disqualification imposed on third offence—Whether the fact that the two previous convictions had been taken into consideration on disqualification for the third offence could be a mitigating ground on fourth offence—Road Traffic Act 1962, s 5(3). **Fearon v Sydney** [1966] 2 694, QBD.

Reasons for non-disqualifying—Circumstances which may be taken into account in determining whether or not to disqualify—Road Traffic Act 1962, s 5(3). **Baker v Cole** [1971] 3 680, QBD.

Period of disqualification—

Indefinite period—Life disqualification—Whether permissible as disqualification for certain period—Road Traffic Act 1962, s 5. **R v Tunde-Olarinde** [1967] 2 491, CA.

Indefinite period—No power to disqualify for indefinite period—Road Traffic Act 1930, s 15. **R v Fowler** [1937] 2 380, CCA.

Life disqualification—Propriety—Offender aged 28—Previous disqualifications extending for some 12 years—Disqualifications not for bad driving—Whether life disqualification depriving offender of all future opportunity for driving, should stand—Road Traffic Act 1962, s 5. **R v Bond** [1968] 2 1040, CA.

Long period—Considerations to be taken into account. **R v Shirley** [1969] 3 678, CA.

Sentence of imprisonment and disqualification—Period of disqualification should exceed term of imprisonment—Road Traffic Act 1930, ss 6(1)(a), 7(4). **R v Phillips** [1955] 3 273, CCA.

Plea of guilty in accused's absence—

Adjournment of proceedings before ordering disqualification. *See* Magistrates (Plea of guilty—Absence of accused—Adjournment of proceedings before ordering disqualification).

Power to impose disqualification—

Conviction of stealing motor car—No conviction of taking and driving away without owner's consent—Offences of taking away motor cars without owner's consent taken into consideration—Whether power to impose disqualification—Road Traffic Act 1930, s 6(1)—Road Traffic Act 1956, s 26(1), Sch 4, para 8. **R v Williams** [1962] 3 639, CCA.

ROAD TRAFFIC (cont)

Disqualification for holding licence (cont)—

Provisional licence—

Breach of condition—Offence—Driving while disqualified—No defence that accused entitled to hold provisional licence and drive in accordance with conditions of licence—Driver failing to exhibit L plates—Road Traffic Act 1960, ss 104(3), 109(3), 110. *Hunter v Coombs* [1962] 1 904, QBD.

Removal—

Application to remove disqualification after disqualification removed in part—Jurisdiction of justices to hear application—Road Traffic Act 1930, s 7(3). *R v Manchester Justices, ex parte Gaynor* [1956] 1 610, QBD.

Removal in part—Disqualification for driving motor vehicles of all classes for five years—Whether disqualification removable in part on subsequent good behaviour—Road Traffic Act 1930, s 7(3). *R v Cottrell* [1955] 3 817, Assizes.

Removal in part—Good behaviour—Whether disqualification removable in part on subsequent good behaviour—Road Traffic Act 1930, s 6(1), s 7(3). *R v Cottrell (No 2)* [1956] 1 751, CCA.

When application for removal may be made—Road Traffic Act 1960, s 106(2), as amended by Road Traffic Act 1962, s 6(1). *R v Lambeth Metropolitan Magistrate, ex parte Everett* [1967] 3 648, QBD.

Sentence—

Appeal—Disqualification a sentence for purpose of appeal to Court of Criminal Appeal—Court having jurisdiction to vary sentence of disqualification—Criminal Appeal Act 1907, s 21. *R v McNulty* [1964] 3 713, CCA.

Order of disqualification—Whether order of disqualification a sentence—Magistrates' Courts Act 1952, s 83(3)(d)—Road Traffic Act 1960, ss 104(1), 105(1). *R v Surrey Quarter Sessions, ex parte Comr of Police of the Metropolis* [1962] 1 825, QBD.

Separate periods of disqualification—

Periods running concurrently—Whether court having Power to impose consecutive periods of disqualification. *R v Meese* [1973] 2 1103, CA.

Severable from conviction—

Excess of jurisdiction—Disqualification severable from conviction—Order of certiorari quashing disqualification not having effect of quashing conviction and fine—Road Traffic Act 1930, s 12(2) (as substituted by Road Traffic Act 1934, s 5(2), as amended by Road Traffic Act 1956, s 55, Sch 9). *R v Arundel Justices, ex parte Jackson* [1959] 2 407, QBD.

Special reasons for not disqualifying—

Driving while unfit through drink or drugs. *See* Driving while unfit to drive through drink or drugs—Special reasons for not disqualifying, *post*.

Generally. *See* Special reasons for not disqualifying, *post*.

Subsequent conviction for driving whilst disqualified—

Original disqualification quashed—Whether certiorari available to give ancillary relief. *See* **Certiorari** (Jurisdiction—Ancillary relief—Applicant convicted of motoring offence and disqualified for holding licence).

Test of competence to drive—

Disqualification until driving test retaken—Circumstances not disclosing lack of competence by driver—Whether test should be ordered—Road Traffic Act 1972, s 93(7). *R v Donnelly* [1975] 1 785, CA.

Using vehicle on road without insurance policy being in force. *See* **Motor insurance** (Disqualification for using etc vehicle on road without policy being in force).

Drink—

Blood-alcohol proportion of driver—

Breath test. *See* Breath test, *ante*.

Special reasons for not disqualifying. *See* Special reasons for not disqualifying—Driving with blood-alcohol proportion above prescribed limit, *post*.

Specimen for laboratory test. *See* Specimen for laboratory test to determine driver's blood-alcohol proportion, *post*.

Driving while unfit. *See* Driving while unfit to drive through drink or drugs, *post*.

Unfitness to drive—

In charge of vehicle. *See* Being in charge of vehicle when unfit to drive through drink or drugs, *ante*.

Driver—

Contributory negligence—

Learner driver and instructor. *See* **Negligence** (Contributory negligence—Road accident—Learner driver and instructor).

Duty to stop and furnish particulars of accident. *See* Accident—Duty to stop and furnish particulars—Driver, *ante*.

Duty to take care. *See* **Negligence** (Duty to take care—Driver of motor vehicle).

Offence—

Identity of driver—Information. *See* Offence—Duty to give information—Duty of any person to give information which it is in his power to give which may lead to identification of driver, *post*.

Pedestrian crossing—

Duty of driver. *See* Pedestrian crossing—Duty of driver, *post*.

Stage carriage—

Offence by driver or conductor. *See* Stage carriage—Offence by driver or conductor, *post*.

Using vehicle on road in breach of regulations. *See* Motor vehicle—Using vehicle on road in breach of regulations—Driver of vehicle, *post*.

Driver's records—

Goods vehicle. *See* Goods vehicle—Driver's records, *post*.

ROAD TRAFFIC (cont)

Driving—

Breath test—

Person driving or attempting to drive. *See* Breath test—Person driving or attempting to drive, *ante*.

Careless driving. *See* Careless driving, *ante*.

Control of vehicle—

Learner being taught to drive—Sitting in driver's seat and using accelerator and footbrake—Instructor holding steering wheel and handbrake—Road Traffic Act 1930, s 4(1). **Langman v Valentine** [1952] 2 803, QBD.

Dangerous driving. *See* Dangerous driving, *ante*.

Excessive speed. *See* Excessive speed, *post*.

Steering vehicle down incline—

Engine not running—Accused releasing handbrake and steering vehicle 100 yards to garage—Whether accused 'driving'—Road Traffic Act 1930, s 7(4). **Saycell v Bool** [1948] 2 83, KBD.

Towed vehicle—

Steersman of towed breakdown vehicle—Whether 'driving'—Road Traffic Act 1930, ss 1, 4(1), 11(1), 121—Road Traffic (Driving Licences) Act 1936, s 1(1)—Motor Vehicles (Construction and Use) Regulations 1941 (S R & O 1941 No 398), reg 82(2). **Wallace v Major** [1946] 2 87, KBD.

Using driver's controls for purpose of directing movement of car—

Accused pushing car with both feet on road and occasionally adjusting steering wheel—Whether accused 'driving'—Road Traffic Act 1972, s 99(b). **R v MacDonagh** [1974] 2 257, CA.

Driving examiner—

Duty of care. *See* Negligence (Duty to take care—Driving examiner).

Driving licence—

Conditions attached to provisional licences—

Motor bicycle not having sidecar attached—Sidecar—Tubular steel framework without structure—Passenger could not safely be carried on framework—Motor Vehicles (Driving Licences) Regulations 1963 (SI 1963 No 1026), re & 7(1)(d). **Cox v Harrison** [1968] 3 811, QBD.

Offence of using motor vehicle on road without supervision of qualified driver—Bond mini-car—Second seat able to be fitted to transverse bars—Whether vehicle constructed to carry only one person—Motor Vehicles (Driving Licences) Regulations 1963 (SI 1963 No 1026), reg 7(2)(b). **Vincent v Whitehead** [1966] 1 917, QBD.

Disqualification. *See* Disqualification for holding licence, *ante*.

Driving without licence. *See* Driving without licence, *post*.

Endorsement—

Common law misdemeanour—Attempt to commit offence of taking and driving away motor vehicle without consent of owner or other lawful authority—No power to order endorsement of offender's driving licence—Road Traffic Act 1960, s 217—Road Traffic Act 1962, s 7—Magistrates' Courts Act 1952, s 19(9). **Bell v Ingham** [1968] 2 333, QBD.

Obligatory endorsement—Offence of failing to secure load on vehicle—Motor Vehicles (Construction and Use) Regulations 1963 (SI 1963 No 1646), reg 73(2)—Road Traffic Act 1960, s 64(2), as amended—Road Traffic Act 1962, ss 7, 8, Sch 1, Pt 2, para 19(a). **Beighton v Brown** [1965] 1 793, QBD.

Groups of vehicles for which licence granted—

Means of reversing—Three-wheeled motor vehicle constructed with means of reversing which not immediately usable by reason of reversing equipment being blanked off—Whether vehicle within group A or group G—Motor Vehicles (Driving Licences) Regulations 1950 (SI 1950 No 333), Sch 2. **Baldwin v Worsman** [1963] 2 8, QBD.

Heavy goods vehicle. *See* Heavy goods vehicle driver's licence, *post*.

Obtained by false pretence—

Motor insurance—Extent of cover. *See* Motor insurance (Compulsory insurance against third party risks)—Extent of cover—Driver under age of 16—Licence obtained by false pretence).

Possession—

Burden of proof in criminal proceedings. *See* Criminal evidence (Burden of proof—Facts peculiarly within knowledge of accused—Licence—Charge of driving without licence).

Provisional licence—

Conditions attached to provisional licences—Motor bicycle not having sidecar attached—Sidecar—Structure attached to motor bicycle for purpose of carrying goods—Whether sidecar limited to structure for safe carriage of passenger—Motor Vehicle (Driving Licences) Regulations 1971 (SI 1971 No 451), reg 6(1)(d)(2)(e). **Keen v Parker** [1976] 1 203, QBD.

Disqualification. *See* Disqualification for holding licence—Provisional licence, *ante*.

Refusal to grant—

Appeal—Person aggrieved—Refusal by licensing authority to grant, being satisfied on inquiry that applicant suffering from prescribed disease—Whether applicant 'person aggrieved'—Right of appeal—Road Traffic Act 1960, ss 100(2), 103. **R v City of Cardiff Justices, ex parte Cardiff City Council** [1962] 1 751, QBD.

Prescribed disease—Refusal by licensing authority to grant licence being satisfied on inquiry that applicant suffering from prescribed disease—Applicant suffering from epilepsy which did not show itself while controlled by drugs—Whether applicant suffering from prescribed disease—Road Traffic Act 1960, s 100(2). **Devon County Council v Hawkins** [1967] 1 235, QBD.

Supervision of learner driver—

Bubble car—Three-wheeled motor vehicle with seats for driver and passenger—Whether driver holding provisional licence required to drive under supervision of qualified driver—Motor Vehicles (Driving Licences) Regulations 1963 (SI 1963 No 1026), reg 7(2)(e). **Brown v Anderson** [1965] 2 1, QBD.

ROAD TRAFFIC (cont)

Driving licence (cont)—

Supervision of learner driver (cont)—

Sign on vehicle—Duty of supervisor—Road Traffic Act 1930, s 5(3)—Motor Vehicles (Driving Licences) Regulations 1937 (S R & O 1937 No 438), reg 16(3)(a), (c). **Rubie v Faulkner** [1940] 1 285, KBD.

Visiting force permit—Holder of permit—Whether holder of such permit entitled to supervise learner driver holding provisional driving licence—Permit was not a licence within Part 2 of Road Traffic Act 1960, not equated with such a licence +or this purpose—Motor Vehicles (International Circulation) Act 1952, s 1(2)(b)—Road Traffic Act 1960, s 102—Motor Vehicles (Driving Licences) Regulations 1950 (S I 1950 No 333), reg 16(3)(a)—Motor Vehicles (International Circulation) Order 1957 (S I 1957 No 1074), art 3(1)(a). **Urey v Lummis** [1962] 2 463, QBD.

Test conducted in accordance with regulations—

Jurisdiction of magistrate—Power to question findings of examiner—Whether jurisdiction limited to determining whether test conducted in accordance with regulations—Road Traffic Act 1934, s 6(6). **Geraghty v Morris** [1939] 2 269, KBD.

Driving test—

Conduct of test. *See* Driving licence—Test conducted in accordance with regulations, *ante*.

Disqualified driver. *See* Disqualification for holding licence—Test of competence to drive, *ante*.

Test taken in uninsured car. *See* Motor insurance (Driving school—Implied duty to insure against third party risks).

Driving under age—

Heavy motor car—

Driver under 21 years of age—Election as to appropriate statutory offence—Offence of under age or offence of driving while disqualified—Whether prosecution may elect to proceed under s 110 rather than s 5—Road Traffic Act 1960, ss 5, 97(1), 110(b), as amended by Road Traffic Act 1962, s 8 and Sch 1. **R v Saddlevorth Justices, ex parte Staples** [1968] 1 1189, QBD.

Driving while disqualified for holding licence—

Absolute prohibition—

Knowledge of defendant—Defendant having no knowledge that he had been disqualified—Road Traffic Act 1930, s 7(4). **Taylor v Kenyon** [1952] 2 726, QBD.

Disqualification—

Disqualification for an additional period under totting up procedure—Application for removal of disqualification—Power of justices' to remove disqualification—Circumstances in which justices may remove disqualification—Road Traffic Act 1960, s 110(b)—Road Traffic Act 1962, s 5(3), (5)—Road Traffic (Disqualification) Act 1970, s 2(1). **R v Bradfield and Sonning Justices, ex parte Holdsworth** [1971] 3 755, QBD.

Fine instead of imprisonment—

Special circumstances—Circumstances justifying fine rather than imprisonment—Sudden emergency—No other means of transport—Road Traffic Act 1930, s 7(4). **Aichroth v Cottee** [1954] 2 856, QBD.

Special circumstances—Test to be applied—Circumstances of special rather than general character relating to offence and not offender—Road Traffic Act 1930, s 7(4). **Lines v Hersom** [1951] 2 650, KBD.

Imprisonment—

Young offender—Offender under 21 of age—Sentence—When sentence of imprisonment may be imposed—Road Traffic Act 1930, s 7(4)—Criminal Justice Act 1948, s 17(2). **Davidson-Houston v Lanning** [1955] 2 737, QBD.

Mens rea—

Mistake—Driving on a road—Defendant driving in mistaken belief that place where he is driving is not a road—Whether guilty of offence of driving on a road while disqualified—Road Traffic Act 1972, s 99. **R v Miller** [1975] 2 974, CA.

Original disqualification quashed—

Whether certiorari available to give ancillary relief. *See* Certiorari (Jurisdiction—Ancillary relief)—Applicant convicted of motoring offence and disqualified for holding driving licence).

Driving while unfit to drive through drink or drugs—

Arrest without warrant—

Power of constable to arrest on reasonable suspicion that offence committed—Road Traffic Act 1960, s 6(4). **Wiltshire v Barrett** [1965] 2 271, CA.

Drug—

Insulin—Overaction of insulin properly taken by a diabetic—Whether insulin a 'drug'—Road Traffic Act 1930, s 15(1). **Armstrong v Clark** [1957] 1 433, QBD.

Drunk in charge of carriage—

Carriage—Bicycle—Whether bicycle a 'carriage'—Licensing Act 1872, s 12. **Corkery v Carpenter** [1950] 2 745, KBD.

Evidence—

Amount of liquor consumed—Conversion of proportion of alcohol in blood as certified in analyst's certificates into quantity of liquor consumed—Tables of destruction rate and conversion rates accepted by medical profession—Whether evidence of medical practitioner on quantity of liquor consumed computed by reference to table admissible—Road Traffic Act 1962, s 2(2) **R v Somers** [1963] 3 808, CCA.

Medical evidence—Consent—Accused having consented to being examined after having been told that it was no part of doctor's duty to examine him in order to give opinion as to unfitness to drive through drink—Evidence of doctor ought not to have been received—Road Traffic Act 1960, s 6. **R v Payne** [1963] 1 848, CCA.

ROAD TRAFFIC (cont)

Driving while unfit to drive through drink or drugs (cont)—

Evidence (cont)—

Medical evidence—Weight. *See Criminal evidence* (Medical evidence—Weight—Position of doctor giving medical evidence at criminal trial—Weight to be attached to such evidence—Wrong to direct jury that doctor's evidence ought to be accepted in the absence of reasons for rejecting it—Road traffic offence—Driving while unfit to drive through drink).

Non-expert medical evidence—Whether non-expert medical witness can testify as to his impression whether accused had taken drink—Whether such witness can give his opinion whether, as result of such drink, accused fit to drive—Road Traffic Act 1960, s 6(1). **R v Davies** [1962] 3 97, C-MAC.

Police doctor—Independent professional man—Evidence to be accepted as that of professional man under duty to advise court—Road Traffic Act 1930, s 15(1). **R v Nowell** [1948] 1 794, CCA.

Mens rea—

Effect of drug—Diabetic—Effect of insulin—Diabetic driver overcome by effect of Insulin for reasons unknown to himself—Whether guilty of offence—Road Traffic Act 1960, s 6(1). **Watmore v Jenkins** [1962] 2 868, QBD.

Sentence—

Preventive detention—Whether appropriate. **R v Smith** [1961] 2 743, CCA.

Special reasons for not disqualifying—

Driver fit when commencing journey—Stopping car on feeling effects of drink—Road Traffic Act 1930, s 15(2). **Duck v Peacock** [1949] 1 318, KBD.

Ignorance of combined effect of drink and drugs—Road Traffic Act 1930, s 15(2). **Chapman v O'Hagan** [1949] 2 690, KBD.

No attempt to drive and no intention to drive—Road Traffic Act 1930, s 15(2). **Jowett-Shooter v Franklin** [1949] 2 730, KBD.

Specimen of blood or urine—

Analyst's certificate as to proportion of alcohol in specimen—Certificate as evidence of matters certified—Admissibility—Failure to serve copy on accused not less than seven days before hearing or trial—Waiver of objection to admission by accused—Failure by accused to object to admission before close of prosecution case constituting waiver—Road Traffic Act 1962, s 2(2). **R v Banks** [1972] 1 1041, CA.

Blood-alcohol concentration as ascertained from laboratory test—Specimen provided for laboratory test for purpose of charge of driving with blood-alcohol concentration above prescribed limit—Defendant having consumed alcohol after driving and before test—Whether result of test admissible as evidence of unfitness to drive—Road Traffic Act 1972, ss 5(1), 7(1). **R v Richards (Stanley)** [1974] 3 696, CA.

Consent to—Lack of consent established—Discretion to exclude evidence—Road Traffic Act 1962, s 2(1). **R v Palfrey** [1970] 2 12, CA.

Consent to—Specimen provided after warning required by statutory provisions relating driving with blood-alcohol proportion above prescribed limit—Whether specimen may be used to support charge of driving while unfit—Road Traffic Act 1962, s 2(1)—Road Safety Act 1967, s 3(10). **R v Palfrey** [1970] 2 12, CA.

Offer to supply part of specimen to accused—Necessity for constable, requesting specimen for analysis, simultaneously to offer to supply part of specimen to accused—Discretion of trial judge to admit evidence of request or specimen if no prejudice to accused where no offer made until after specimen provided—Road Traffic Act 1962, s 2(5). **R v Mitten** [1965] 2 59, CCA.

Offer to supply part of specimen to accused—Time when offer should be made—Necessity for constable requesting specimen of urine for analysis at same time to offer to supply part of specimen in suitable container—Road Traffic Act 1962, s 2(5). **R v Price** [1963] 3 938, CCA.

Specimen provided to a medical practitioner—No request by accused to be supplied with such a specimen—Whether certificate of authorised analyst admissible in evidence—Road Traffic Act 1962, s 2(1), (4), (5). **R v Dooley** [1964] 1 178, Crown Ct.

Supply of specimen to accused—Specimen of urine to be supplied to accused within a reasonable time after specimen is taken—Ordinarily, though not necessarily, before accused leaves police station—Road Traffic Act 1962, s 2(4)(b). **R v Sharp** [1968] 3 182, CA.

Urine test—Practice—Disputes as to admissibility of evidence—Road Traffic Act 1962, s 2(5). **R v Mitten** [1965] 2 59, CCA.

Driving with blood-alcohol proportion above prescribed limit—

Breath test. *See* Breath test, *ante*.

Special reasons for not disqualifying. *See* Special reasons for not disqualifying—Driving with blood-alcohol proportion above prescribed limit, *post*.

Specimen for laboratory test. *See* Specimen for laboratory test to determine driver's blood-alcohol proportion, *post*.

Driving without licence—

Onus of proof—

Possession of licence—Onus on accused of proving he has licence—Road Traffic Act 1930, s 4(1). **John v Humphreys** [1955] 1 793, QBD.

Drugs—

Driving while unfit. *See* Driving while unfit to drive through drink or drugs, *ante*.

Unfitness to drive—

In charge of vehicle. *See* Being in charge of vehicle when unfit to drive through drink or drugs, *ante*.

ROAD TRAFFIC (cont)

Dual purpose vehicle—

Bicycle fitted with auxiliary engine. *See* Motor vehicle—Dual purpose vehicle—Bicycle fitted with auxiliary engine, *post*.

Speeding. *See* Excessive speed—Dual purpose vehicle, *post*.

Dumper—

Vehicle intended or adapted for use on road. *See* Motor vehicle—Intended or adapted for use on road—Dumppers, *post*.

Emergency—

Driving with blood-alcohol proportion above prescribed limit—

Special reason for not disqualifying. *See* Special reasons for not disqualifying—Driving with blood-alcohol proportion above prescribed limit—Emergency, *post*.

Stopping on motorway. *See* Motorway—Restrictions on stopping—Emergency, *post*.

Excessive speed—

Built-up area—

Road with no lighting by lamps—Speed limit signs erected by local authority—Prima facie proof that road to be deemed to be in built up area—Road Traffic Act 1934, s 1(1)(b). **Boyd-Gibbins v Skinner** [1951] 1 1049, KBD.

Corroboration of evidence—

Evidence of two witnesses each relating to a different time and place on the road—Whether corroboration—Road Traffic Act 1930, s 10(3)—Road Traffic Act 1934, s 2(3), sched 1. **Brighty v Pearson** [1938] 4 127, KBD.

Speedometer reading—Evidence as to accuracy—Evidence by two police officers of speedometer reading—Whether sufficient without evidence as to accuracy of speedometer—Road Traffic Act 1934, s 2(3). **Melhuish v Morris** [1938] 4 98, KBD.

Speedometer reading—Evidence of one police officer of speedometer reading—No evidence as to accuracy of speedometer—Road Traffic Act 1930, s 10(3) (as substituted by Road Traffic Act 1934, s 2(3)). **Penny v Nicholas** [1950] 2 89, KBD.

Speedometer reading—Sufficiency—Corroboration by another witness—Whether necessary—Road Traffic Act 1934, s 2(3). **Russell v Beesley** [1937] 1 527, KBD.

Dangerous driving. *See* Dangerous driving—Excessive speed, *ante*.

Dual-purpose vehicle—

Van with transverse seats and with windows fitted on each side—Side windows covered by painted panels of wood screwed into windows—Whether van goods vehicle or dual-purpose vehicle—Road Traffic Act 1960, Sch 1, para 14(2)(b)(ii), as substituted by Motor Vehicles (Variation of Speed Limits) Regulations 1962 (S I 1962 No 204), reg 3. **Popperwell v Cockerton** [1968] 1 1038, QBD.

Exemption—

Police—Use of vehicle for police purposes—Police officer driving vehicle in course of duties to give evidence at court—Speed limit exceeded—Whether vehicle being used for police purposes—Road Traffic Act 1960, s 25. **Aitken v Yardwood** [1964] 2 537, QBD.

Goods vehicle—

Motor van with pneumatic tyres—No carrier's licence issued in respect of vehicle—Road Traffic Act 1930, sched 1, para 2(1)(a), as substituted by Road Traffic Act 1934, s 2(1), sched 1—Motor Vehicles (Variation of Speed Limit) Regulations 1950 (S I 1950 No 1705), reg 2. **Manning v Hammond** [1951] 2 815, KBD.

Shooting brake with C licence—Use solely for carrying passengers—Road and Rail Traffic Act 1933, s 9(2). **Blenkin v Bell** [1952] 1 1258, QBD.

Utility car—Whether subject to speed limit—Road Traffic Act 1934, s 2, sched 1. **Hubbard v Messenger** [1937] 4 48, KBD.

Vehicle capable of carrying passengers—Use solely for carrying passengers—Road Traffic Act 1934, Sch 1, para 2(1)(a). **Woolley v Moore** [1952] 2 797, QBD.

Vehicle not being used for carrying goods—Road Traffic Act 1934, Sch 1, para 2(1)(a), as amended by Motor Vehicles (Variation of Speed Limit) Regulations 1955 (S I 1955 No 1880), reg 2. **Bryson v Rogers** [1956] 2 826, QBD.

Negligence. *See* Negligence (Vehicles—Speed).

Passenger vehicle—

Vehicle adapted to carry more than seven passengers exclusive of driver—Adapted—Vehicle originally so constructed and not since altered—Road Traffic Act 1960, ss 24(1), 117(1)(b), Sch 1, para 1(1), (2). **Maddox v Storer** [1962] 1 831, QBD.

Excise licence—

Altered condition of vehicle—

Goods vehicle—Saloon car fitted with rails to carry samples of clothing for commercial traveller—When no samples being carried passengers could continue to use and sit in rear seats—Whether a goods vehicle—Vehicles (Excise) Act 1949, s 27(1). **Taylor v Mead** [1961] 1 626, QBD.

Exhibition of licence on vehicle—

Offence—Failure to exhibit licence—Defendant not in possession of licence—Defendant convicted of not having licence in force for vehicle—Whether fact that defendant has no licence defence to charge of failing to exhibit it—Vehicles (Excise) Act 1971, ss 8(1), 12(4). **Pilgram v Dean** [1974] 2 751, QBD.

Fraudulent use of licence—

Intention to defraud—Essentiality of intent to avoid paying duty—Motor vehicle licence placed on another vehicle so broken down that it was uncertain whether it was any longer mechanically propelled—Intent to avoid enquiries by police—No direction whether vehicle was mechanically propelled vehicle—Whether fraudulent intention shown—Vehicles (Excise) Act 1962, s 17(1). **R v Manners-Astley** [1967] 3 899, CA.

ROAD TRAFFIC (cont)**Excise licence (cont)—****Rate of duty—**

Alteration of vehicle or its use—Lorry licensed as farmer's goods vehicle—Farmer's goods vehicle if carrying produce of agricultural land which vehicle owner 'occupies'—Lorry owners engaged in grass-drying business—Lorry used for transporting grass clippings to their premises—Lorry carrying clippings from farm not owned by lorry owners—Agreement between lorry owners and farmer—Farmer allowing lorry owners unrestricted access to his field to cut grass and remove clippings—Operation lasting 3 1/2 days—Whether lorry owners 'occupiers' of the land—Whether lorry entitled to carry farmer's goods vehicle licence—Vehicles (Excise) Act 1971, s 18, Sch 4, para 9. **Howard v Grass Products Ltd** [1972] 3 530, QBD.

Altered condition of vehicle—Loose equipment—Removable boards fitted to sides of lorry—Whether 'loose equipment'—Finance Act 1922, s 14(1)(2)—Road Traffic Act s 26. **R Lowe v Stone** [1948] 2 1076, KBD.

Goods vehicle—Agricultural engine—Mechanically propelled lime-spreading vehicle—Carriage of lime—Vehicles (Excise) Act 1949, s 4(2)(a) (as amended by Finance Act 1950, s 13(2), s 5(1)). **R v Berkshire County Council, ex parte Berkshire Lime Co (Childrey) Ltd** [1953] 2 779, QBD.

Goods vehicle—Estates car delivery van used for carrying photographic equipment in connection with business of photographer—Vehicles (Excise) Act 1949, s 13(1), s 27(1)—Finance Act 1952, s 7(2). **Taylor v Thompson** [1956] 1 352, QBD.

Goods vehicle—Used for conveyance of goods—Vehicle containing no goods—Trailer containing goods—Vehicles (Excise) Act 1949, s 27(1). **James v Davies** [1952] 2 758, QBD.

Goods vehicle—Utility van towing unladen caravan—Vehicles (Excise) Act 1949, s 27(1). **Pearson v Boyes** [1953] 1 492, QBD.

Haulage vehicle—Tractor used for hauling timber loaded on trailer—Equipment fitted to tractor for loading felled timber on to trailer—Whether goods vehicle or haulage vehicle—Vehicles (Excise) Act 1949, s 4(2)(f) (as amended by Finance Act 1950, ss 13(2)(d), 5(1), (2), 27(1)). **T K Worgan & Son Ltd v Gloucestershire County Council, H Lancaster & Co Ltd v Same** [1961] 2 301, CA.

Haulage vehicle—Unladen weight—Ballast block—Loose equipment—Tractor carrying tools and ballast—Road Traffic Act 1930, s 26—Finance Act 1933, s 25, sched VII, Part II, para 4(e)(ii). **London County Council v Hays Wharf Cartage Co Ltd** [1953] 2 34, QBD.

Unlicensed vehicle—

Keeping vehicle on road without a licence—Unlicensed vehicle bought for sale by garage owner and placed in roadway during re-arrangement of showroom—Whether keeping vehicle on road—Vehicles (Excise) Act 1962, s 7. **Dudley v Holland** [1963] 3 732, QBD.

Minimum penalty—Amount of duty chargeable—Rebuttal of presumption—Vehicles (Excise) Act 1949, s 15(1). **Holland v Perry** [1952] 2 720, QBD.

User attracting higher rate of duty—Not a summary offence—Liability to excise penalty—Vehicles (Excise) Act 1949, s 13(2). **Brown v Allweather Mechanical Grouting Co Ltd** [1953] 1 474, QBD.

Express carriage—**Road service licence—**

Backing of licence—Conditions—Conditions affecting licence in area in which it is granted—Jurisdiction of traffic commissioners—Jurisdiction of Minister of Transport on appeal—Road Traffic Act 1930, ss 72, 73, 81—Road Traffic Act 1934, s 40. **R v Minister of Transport, ex parte Valliant Direct Coaches Ltd** [1937] 1 264, KBD.

Separate fares—

Carriage in consideration of separate payments—Carrying friends of owner-driver—Payment for oil and petrol used—Road Traffic Act 1930, s 61. **East Midland Traffic Area Traffic Comrs v Tyler** [1938] 3 39, KBD.

Employees of company—Payment by company—Conveyance by owner-driver of bus of passengers employees of company at fixed weekly sum paid by company—Payments by employees to company towards that sum—No payment by employees direct to owner—Knowledge of bus driver that unlawful to carry employees if they in fact contributing to sum paid by company—Whether passengers carried for hire or reward at separate fares—Whether bus driver caused vehicle to be used as express carriage—Road Traffic Act 1960, s 117(1)(a) s 118(3)(b) s 134(3). **Wurzel v Wilson** [1965] 1 26, QBD.

Lump sum payment—Car used to take owner's fellow workmen home from work—Owner paid lump sum a week—Each passenger contributing equal amount to lump sum payment whether travelling or not—Road Traffic Act 1930, s 61(1). **Lyons v Denscombe** [1949] 1 977, KBD.

Special occasion—

Conveyance of private party—Conveyance of members of club to football matches on six separate occasions—Conveyance of persons not members of club—No knowledge by owners of carriage—Vicarious liability—Road Traffic Act 1930, s 61(2)—Road Traffic Act 1934, s 25(1). **Browning v J W H Watson (Rochester) Ltd** [1953] 2 775, QBD.

Conveyance of private party—Journey advertised by organisers—Coach-owners' ignorance of advertisement—Road Traffic Act 1934, s 25(1)(b). **Reynolds v G H Austin & Sons Ltd** [1951] 1 660, KBD.

Conveyance of private party—Members of club conveyed on fishing trips on seven consecutive Sundays—Need to prove occasion special to locality in which journey made—Road Traffic Act 1930, s 61(2)—Road Traffic Act 1934, s 25(1). **Wurzel v Dowker** [1953] 2 88, QBD.

Conveyance of private party—Necessity for driver's work ticket—Belief of coach owner that party a private party—Road Traffic Act 1930, s 72—Road Traffic Act 1930, s 72—Road Traffic Act 1934, s 25. **Evans v Hassan** [1936] 2 107, KBD.

ROAD TRAFFIC (cont)

Express carriage (cont)—

Special occasion (cont)—

Event continuing over lengthy period—Motor car used to convey passengers to see Blackpool illuminations—Illuminations continued 49 days—Whether a 'special occasion'—Road Traffic Act 1930, s 61(1). **Nelson v Blackford** [1936] 2 109, KBD.

Passengers travelling frequently—Members of club—Conveyance to football ground when team playing at home—Whether passengers travelling 'frequently'—Road Traffic Act 1930, ss 61(2), 72(1), (10)—Road Traffic Act 1934, s 25(1)(e). **Sidery v Evans and Peters** [1938] 4 137, KBD.

Use of hackney carriage as an express carriage—

Sharing of fare by passengers—Owner permitting such use—Road Traffic Act 1930, ss 61, 72(10). **Newell v Cross, Same v Cook, Same v Plume, Same v Chenery** [1936] 2 203, KBD.

Vehicle adapted to carry eight or more passengers—

Adapted—Mini-bus—Agreement by mini-bus owner to carry up to seven passengers at fixed daily fare five days a week—Conveyance of six passengers—Fare paid by one passenger—Payments by other passengers towards fare—No payment by other passengers direct to owner—Vehicle capable of carrying eight passengers but evidence that, if so, driver might be inconvenienced—Whether vehicle 'adapted' to carry eight or more passengers—Whether passengers carried for hire or reward at separate fares—Road Traffic Act 1960, ss 117(1)(b), 118 (3)(b). **Wurzel v Addison** [1965] 1 20, QBD.

Failure to give signal—

Stopping of vehicle—

Hand signal. *See* Stopping of vehicle—Failure to give hand signal, *post*.

Failure to provide specimen for breath test. *See* Breath test—Failure to provide specimen, *ante*.

Failure to provide specimen for laboratory test—

Accused not driving at time request made for specimen for breath test—

Arrest—Whether arrest illegal—Whether subsequent request for specimen for laboratory test valid—Road Safety Act 1967, ss 2(1),(5), 3(1),(3). **R v Bove** [1970] 2 20, QBD.

Accused suspected of driving vehicle involved in accident—

Accused arrested following failure to supply specimen for breath test—Accused alleging that he had not been driving at time of accident—Accused refusing to supply specimen for laboratory test—Accused charged with failing to supply specimen without reasonable excuse—Whether fact that there was reasonable cause to believe accused was driving sufficient to prove offence—Whether necessary to prove accused had in fact been driving or attempting to drive—Road Traffic Act 1972, ss 8(2), 9(3). **R v Richardson (John)** [1975] 1 905, CA.

Hospital patient—

Medical practitioner's agreement—Medical practitioner agreeing to provision of specimen of blood—Agreement not valid for specimen of urine—Road Safety Act 1967, s 3(2),(3). **R v Green** [1970] 1 408, Assizes.

Laboratory test—

Refusal to supply specimen—Refusal—Question of fact—Initial refusal followed by change of mind—Road Safety Act 1967, s 3(3). **R v Reid (Philip)** [1973] 3 1020, CA.

Mandatory warning—

Failure to give warning—Issue to be left to jury—Road Safety Act 1967, s 3(3),(10). **R v Dolan** [1969] 3 683, CA.

Person driving attempting to drive or in charge of vehicle while unfit through drink—

Accused lawfully arrested and required to provide specimen—Accused refusing—Accused acquitted of being in charge while unfit—Whether accused may be convicted of failing to provide specimen—Whether necessary to prove accused had in fact been in charge while unfit at time of arrest—Road Traffic Act 1972, ss 5(5), 9(3). **R v Curran** [1975] 2 1045, CA.

Person driving or attempting to drive—

Driving, attempting to drive or in charge of vehicle while unfit through drink—Accused lawfully arrested and required to provide specimen—Accused refusing—Accused charged with being in charge while unfit and with failing to provide specimen—Accused acquitted of being in charge—No provision for punishment by way of fine or imprisonment for failing to provide specimen where accused not in charge at relevant time—Whether open to court to convict accused of failing to provide specimen—Road Traffic Act 1972, ss 5(2)(3)(5), 9(3), Sch 4, Part 1. **Metropolitan Police Comr v Curran** [1976] 1 162, HL.

Person required to provide specimen for breath test—Requirement to take breath test after person ceasing to drive—Requirement need not be contemporaneous with driving or attempting to drive—Requirement to be sufficiently closely related to driving to be regarded in general sense as being 'at the time' of driving—Road Safety Act 1967, ss 2(1), 3(3),(4). **Brooke v Ellis** [1972] 2 1204, QBD.

Reasonable excuse—

Belief by accused that constable not legally entitled to require specimen—Road Safety Act 1967, s 3(3). **R v Reid (Philip)** [1973] 3 1020, CA.

Blood—Refusal to supply specimen from site selected by doctor—Road Safety Act 1967, s 3(3). **Solesbury v Pugh** [1969] 2 1171, QBD.

Direction to jury—Road Safety Act 1967, s 3(3),(6). **R v Harling** [1970] 3 902, CA.

Embarrassment, physical injury, mental condition—Road Safety Act 1967, s 3(3). **Rowland v Thorpe** [1970] 3 195, QBD.

Evidence of reasonable excuse—Onus of proof to eliminate defence—Road Safety Act 1967, s 3(3). **R v Clarke** [1969] 2 1008, CA.

Excuse relating to blood specimen only insufficient—Road Safety Act 1967, s 3(3). **R v Harling** [1970] 3 902, CA.

Excuse relating to urine specimen only insufficient—Road Safety Act 1967, s 3(3). **Rowland v Thorpe** [1970] 3 195, QBD.

OAD TRAFFIC (cont)

Failure to provide specimen for laboratory test (cont)—

Reasonable excuse (cont)—

Physical or mental inability to provide specimen—Risk to health in providing specimen—Consumption of alcohol by accused after ceasing to drive and before requirement—Whether a reasonable excuse—Road Safety Act 1967, s 3(3). **R v Lennard** [1973] 2 831, CA.

Religious belief—Belief precluding motorist from supplying specimen of blood—Whether belief capable in law of amounting to reasonable excuse—Road Safety Act 1967, s 3(3). **R v John (Graham)** [1974] 2 561, CA.

Refusal to supply specimen—

What constitutes refusal—Road Safety Act 1967, s 3(3) and (6). **R v Clarke** [1969] 2 1008, CA.

Urine—

Request—Request to supply specimen not in accordance with statutory provisions—Effect—Road Safety Act 1967, s 3(6)(b). **R v Pursehouse** [1970] 3 218, CA.

Validity of breath test—

Approved device—Prosecution failing to prove breath test device approved by Secretary of State—Conviction quashed—Road Safety Act 1967, s 3(3), s 7(1). **R v Withecombe** [1969] 1 157, CA.

Warning—

Failure to give warning—Effect—Whether failure to give warning as to consequences of failure to provide specimen prevents specimen being one provided under statute—Whether, on failure to give warning, prejudice is suffered by accused and is relevant in directing jury whether to acquit or not—Road Safety Act 1967, ss 1(1),(2), 3(1),(3),(10). **R v Brush** [1968] 3 467, CA.

Fare—

Hackney carriage. *See* Hackney carriage—Fare, *post*.

Separate fares—

Express carriage. *See* Express carriage—Separate fares, *ante*.

Stage carriage. *See* Stage carriage—Fare, *post*.

Giving way—

Priority to vehicles coming on driver's right. *See* Negligence (Highway—Traffic—Giving way).

Goods vehicle—

Adapted for use for the conveyance of goods—

Vehicle purchased as passenger-carrying vehicle—After purchase vehicle fitted with large roof rack for purpose of carrying goods for hire or reward—Rack capable of being removed or replaced within few minutes—Whether vehicle goods vehicle requiring C licence—Road Traffic Act 1960, ss 164(1)(a), 191(1). **Flower Freight Co Ltd v Hammond** [1962] 3 950, QBD.

Carriage of goods for hire or reward—

Carriers paid to carry spoil from building site to carriers' gravel and sand pit—Spoil used in the course of carriers' business to fill in worked out parts of pit—Whether carriage of spoil for hire or reward in breach of condition of licence—Road Traffic Act 1960, ss 164(5)(a), 168 (3). **Hammond v Hall and Ham River Ltd** [1965] 2 811, HL.

Effluent from septic tanks which carrier cleansed for inclusive charge—Carriage of effluent by motor vehicle to farm—Disinfectant added to effluent—No separate charge for removing effluent from premises, or for delivering it to farm—Whether carriage for reward—Whether carriage of own goods—Road and Rail Traffic Act 1933, ss 1(1),(5)(b), 2(4). **Sweetway Sanitary Cleansers Ltd v Bradley** [1961] 2 821, QBD.

Goods subjected to process or treatment in course of trade or business—Open-cast coal mining—Carriage of coal from site to and from screening plant—Road and Rail Traffic Act 1933, s 1(5)(b). **George Wimpey & Co v John** [1951] 1 307, KBD.

Goods subjected to process or treatment in course of trade or business—Racehorse trainer—Carriage of horse in horsebox—Whether training of racehorses treatment in the course of trade or business—Road and Rail Traffic Act 1933, ss 1(5)(b), 9(1). **Nugent v Phillips** [1939] 4 57, KBD.

Rubbish from building site—Vehicle use to carry away rubbish—Whether vehicle used for carriage of goods for hire or reward—Road and Rail Traffic Act 1933, ss 1(5)(a), 9(1). **Spittle v Thames Grit & Aggregates Ltd** [1937] 4 101, KBD.

Window cleaner's equipment—Carriage of ladders, buckets, and articles for cleaning—Road and Rail Traffic Act 1933, s 1(1)(b), ss 2(4), 36(1). **Clarke v Cherry** [1953] 1 267, QBD.

Carrier's licence—

Licence holder owner driver of vehicle—Contract with appellants to carry concrete for hire or reward—Owner driver falling ill—Employee of appellants sent to drive vehicle—Appellants possessing no carrier's licence—Employee's wages and insurance paid by appellants while he drove vehicle but small sum deducted from contract payments—Arrangement continued only until appellants' contracts carried out—Whether employee servant of owner or appellants—Road Traffic Act 1960, s 164(1)(3). **Ready Mixed Concrete (East Midlands) Ltd v Yorkshire Traffic Area Licensing Authority** [1970] 1 890, QBD.

Limited carrier's licence. *See* Goods vehicle—Limited carrier's licence, *post*.

Private carrier's licence. *See* Goods vehicle—Private carrier's licence, *post*.

Public carrier's licence. *See* Goods vehicle—Public carrier's licence, *post*.

Driver's records—

Agricultural vehicle exempt—Lorry moving agricultural implements from one farm to another—Whether vehicle being used 'in the business of agriculture'—Goods Vehicles (Keeping of Records) Regulations 1935 (S R & O 1935 No 314), reg 6(3)(a). **Flatman v Poole** [1937] 1 495, KBD.

Agricultural vehicle exempt—Vehicle conveying farm produce to retail customer—Whether being 'used in the business of agriculture'—Road and Rail Traffic Act 1933, s 16(1)—Goods Vehicles (Keeping of Records) Regulations 1935 (S R & O 1935 No 314), reg 6(3)(a). **Manley v Dabson** [1949] 2 578, KBD.

ROAD TRAFFIC (cont)

Goods vehicle (cont)—

Driver's records (cont)—

Driver failing to keep proper record—Due diligence by holder of licence to secure compliance with regulations—Warning on back of daily record sheets supplied to drivers as to filling in records accurately—No system of checking records and informing drivers that records must be filled up used by holder of licence—Due diligence not exercised—Road Traffic Act 1960, s 186(1)—Road Traffic Act 1962, s 20—Goods Vehicles (Keeping of Records) Regulations 1935 (S R & O 1935 No 314), reg 6. **Wurzal v W G A Robinson (Express Haulage) Ltd** [1969] 2 1021, QBD.

Duty of driver to keep records—Information as to periods of driving, rest etc—Journey to destination outside Great Britain—Return journey to Great Britain—Whether duty to record information as to periods of driving, rest, etc whilst outside Great Britain—Drivers' Hours (Goods Vehicles) (Keeping of Records) Regulations 1970 (S I 1970 No 123), reg 3(1). **Fox v Lawson** [1973] 2 309, QBD.

Holder of licence delegating checking of records to secretary—Failure by secretary to cause records to be maintained—Reasonable belief by holder of licence that secretary competent—Liability of holder of licence—Road Traffic Act 1960 s 186(1)—Road Traffic Act 1962, s 20—Goods Vehicles (Keeping of Records) Regulations 1935, (S R & O 1935 No 314), reg 6. **Series v Poole** [1967] 3 849, QBD.

Part-time driver—Salesman provided by employer with authorised vehicle—No obligation to use vehicle for work—Whether record of hours of work, etc, to be kept when salesman actually using vehicle—Whether salesman was a 'part-time driver'—Road Traffic Act 1960, s 186(1)—Goods Vehicles (Keeping of Records) Regulations 1935 (S R & O 1935 No 314), reg 5. **Gross Cash Registers Ltd v Vogt** [1965] 3 832, QBD.

Excise duty—

Rate. *See* Excise licence—Rate of duty—Goods vehicle, *ante*.

Goods or burden of any description—

Conveyance of burden—Sound-recording van—Apparatus an essentially permanent fixture—Whether a 'burden' conveyed by van—Road Traffic Act 1930, ss 2(4)(b), 10(1), Sch 1. **Birmingham v Lindsell** [1936] 2 159, KBD.

Heavy goods vehicle driver's licence. *See* Heavy goods vehicle driver's licence, *post*.

Limitation of driver's time on duty—

Evidence—Driver's records—Prosecution of employers + or permitting driver to exceed permitted hours—Only evidence records of hours kept by driver—Records required to be kept by statute—Whether records admissible in evidence—Road Traffic Act 1930, s 19—Road and Rail Traffic Act 1933, s 16. **Beer v W H Clench (1930) Ltd** [1936] 1 449, KBD.

Journey home—Car provided by employer—Whether time spent on journey home by private car provided by employer constitutes hours for rest—Road Traffic Act 1960, s 73(1), 4—Goods Vehicles (Keeping of Records) Regulations 1935 (S R & O 1935 No 314), reg 6(1). **Witchell v Abbott** [1966] 2 657, QBD.

Length of working day—Periods of duty, driving and rest—Computation of periods—Journey to destination outside Great Britain—Return journey to Great Britain—Whether account to be taken of driver's activities outside Great Britain in computing periods of duty, driving and rest—Transport Act 1968, ss 96(1)(3)(a), 103(1). **Lawson v Fox** [1974] 1 783, HL.

Other work in connection with vehicle—Watching vehicle being loaded—Driver standing by and watching loading—Driver responsible for vehicle but taking no part in actual work of loading—Whether driver engaged in 'other work in connection with' the vehicle—Road Traffic Act 1930, s 19. **Wells & Son Ltd v Sidery** [1939] 4 54, KBD.

Permitting driver to drive for more than allowed continuous period—Actual knowledge or knowledge of circumstances on part of employers necessary to constitute offence—Road Traffic Act 1960, s 73(1)(c)(ii). **Grays Haulage Co Ltd v Arnold** [1966] 1 896, QBD.

Time spent on other work in connexion with a vehicle or the load carried thereby—Assisting at depot after period of driving—Unloading vans and sorting parcels—Road Traffic Act 1930, s 19(1)(i),(2)(b). **Parkinson v Axon** [1951] 2 647, KBD.

Voluntary overtime in employers' scrapyard—Whether time when driver bound by terms of employment—Road Traffic Act 1960, s 73(4). **Potter v Gorbould** [1969] 3 828, QBD.

Limited carriers' licence—

Failure to comply with conditions of B licence—Aiding and abetting—Liability of hirer—Road and Rail Traffic Act 1933, s 9(1). **Carter v Mace** [1949] 2 714, KBD.

Limited carrier's licence—

Use of vehicle—Person by whom vehicle used—Vehicle hired by owner to another person—Driver paid by owner—Vehicle used to carry goods for hire or reward for greater distance than permitted by owner's licence—Road and Rail Traffic Act 1933, s 1(3). **Sykes v Millington** [1953] 1 1098, QBD.

Mirrors—

Vehicle properly equipped with mirrors for normal use—Vehicle carrying load of such dimensions that mirrors were ineffective—Whether contravention of regulations—Motor Vehicles (Construction and Use) Regulations 1963 (S I 1963 No 1646), reg 17(1)(a). **Mawdsley v Walter Cox (Transport) Ltd. Same v Allen** [1965] 3 728, QBD.

Operator's licence—

Exemption—Cases in which licence not required—Tower wagon—Vehicle on which only goods carried are those required in connection with work on which tower wagon ordinarily used as such—Meaning of 'tower wagon'—Vehicle used solely as mobile tower enabling overhead work to be done—Transport Act 1968, s 60(1)(2)—Goods Vehicles (Operators' Licences) Regulations 1969 (S I 1969 No 1636), reg 3, Sch 1, para 20. **Anderson and Heeley Ltd v Paterson** [1975] 1 523, QBD.

Plating and test certificates. *See* Plating and test certificates for goods vehicles, *post*.

Private carriers' licence—

Carriage for hire or reward—Whether breach of terms of licence—Road and Rail Traffic Act 1933, s 2(1). **Wurzal v Houghton Main Home Coal Delivery Service Ltd** [1936] 3 311, KBD.

ROAD TRAFFIC (cont)

Goods vehicle (cont)—

Private carrier's licence—

Transfer—Whether licensing authority can hold an inquiry—Road and Rail Traffic Act 1933, s 11. **Re An Application by Woodward** [1937] 4 656, ChD.

Vehicle used to carry goods for hire or reward by person other than licence holder—No identification certificate affixed—Road and Rail Traffic Act 1933, s 2(4), s 9(1)—Goods Vehicles (Licences and Prohibitions) Regulations 1936 (S R & O 1936 No 269), reg 12(2). **Lloyd v E Lee Ltd** [1951] 1 589, KBD.

Public carrier's licence—

Application—Contract A licence existing—Proposed substitution of A licence—Owner of goods carried under contract supporting application—Question whether proposed change in his best interests irrelevant to the grant of application. **Merchandise Transport Ltd v British Transport Commission, Arnold Transport (Rochester) Ltd v Same** [1961] 3 495, CA.

Condition to use vehicle for hauling goods of one firm—Use for haulage for other firms—Permit to use outside 25 miles radius—Effect of permit on conditions of licence—Road and Rail Traffic Act 1933, s 9(1)—Transport Act 1947, s 52(1). **Barham v Castell** [1951] 2 809, KBD.

Failure to comply with conditions of A licence—Aiding and abetting—Hirer making reasonable inquiries—Road and Rail Traffic Act 1933, s 9(1). **Davies, Turner & Co Ltd v Brodie** [1954] 3 283, QBD.

Form of application—Form—Vires—Whether question on application form as to proposed facilities were ultra vires—Whether answers by applicant as to normal user to be taken into account on subsequent application for additional vehicles—Road Traffic Act 1960, s 172(2) (a)—Goods Vehicles (Licences and Prohibitions) Regulations 1960 (S I 1960 No 1505), reg 4(4), Sch 2, Form G V 1A, para 7(a). **Munson v British Railways Board** [1965] 3 441, CA.

Restriction on area of operation—Application to licensing authority to specify new 'operating centre'—Desire to carry goods more than 25 miles from true centre—Transport Act 1947, ss 52(1), 58(4). **R v Licensing Authority for Goods Vehicles for the Metropolitan Traffic Area, ex parte B E Barrett Ltd** [1949] 1 656, KBD.

Restriction on area of operation—Exception—Carriage of meat—Fish not included—Transport Act 1947, s 52(1)(a), s 125(1). **A F Wardhaugh Ltd v Mace** [1952] 2 28, QBD.

Restriction on area of operation—Permit to carry agricultural produce outside twenty-five miles limit—Imported unprocessed hides—Transport Act 1947, s 52(1). **Scarr v Wurzel** [1951] 1 1014, KBD.

Subsidiary company's application—Undertaking to carry only parent company's goods on outward journeys—Uneconomic competition for return loads—Parent company already having C licence—Conditional B licence appropriate—Whether relationship between subsidiary and parent company could be considered. **Merchandise Transport Ltd v British Transport Commission, Arnold Transport (Rochester) Ltd v Same** [1961] 3 495, CA.

Transport Tribunal—Appellate jurisdiction—Objection—Whether tribunal limited to objection—Precedent—Previous decisions not to inhibit tribunal examining the merits of each case. **Merchandise Transport Ltd v British Transport Commission, Arnold Transport (Rochester) Ltd v Same** [1961] 3 495, CA.

Right to licence—

Agreement for use of name and tonnage—Illegality—Road and Rail Traffic Act 1933, ss 1(1), (3), (8), 7, 8, 16, 21. **Nash v Stevenson Transport Ltd** [1936] 1 906, CA.

Speed limit. *See* Excessive speed—Goods vehicle, *ante*.

Suspension of licence—

Overloading goods vehicles—Carrier convicted and fined—Jurisdiction of licensing authority also to suspend licences for same offences—Road Traffic Act 1960, s 178(1)(b). **Re Hampton & Sons** [1965] 3 106, CA.

Hackney carriage—

Carriage of person with consent of hirer—

Express consent—Acquiescence of hirer insufficient—Town Police Clauses Act 1847, s 59. **Yates v Gates** [1970] 1 754, QBD.

Fare—

Metropolitan police area—Journey exceeding six miles—Agreed fare in excess of prescribed rates—London Hackney Carriage Act 1853, s 17(1), (2)—Metropolitan Public Carriages Act 1869, s 9(3), restriction (2)—London Cab Order 1934, (S R & O 1934 No 1346). **Goodman v Serle** [1947] 2 318, KBD.

Hiring—

Conflict between statute and byelaw—Validity of byelaw. *See* Byelaw (Validity—Repugnant to statute—Hackney carriage).

Licence—

Change of ownership of licensed hackney carriage—New owner's right to amendment of licence and register—Town Police Clauses Act 1847, s 37. **R v Weymouth Corp, ex parte Teletax (Weymouth) Ltd** [1947] 1 779, KBD.

Driver required to have licence whether or not hackney carriage plying for hire—Town Police Clauses Act 1847, s 46. **Yates v Gates** [1970] 1 754, QBD.

ROAD TRAFFIC (cont)

Hackney carriage (cont)—

Licence (cont)—

Grant of licence—Natural justice—Duty of licensing authority to act fairly—Duty to give a hearing to all those affected by decision to grant or refuse applications for licences—Council as licensing authority resolving to increase total number of licences for taxi cabs within area—Resolution made without giving taxi cab owners' association an opportunity to be heard—Association previously assured that they would be given opportunity to make representations—Resolution also disregarding previous undertaking to association that no further licences would be issued until proposed legislation controlling private hire cars in force—Council not at liberty to disregard undertaking—Undertaking compatible with council's statutory duties—Order prohibiting council from acting on resolution until representations by interested persons heard and other matters, including undertaking, considered—Town Police Clauses Act 1847, s 37. **Re Liverpool Taxi Owners' Association** [1972] 2 589, CA.

Revocation of licence—Power to revoke licence on second conviction for any offence against Town Police Clauses Act 1847, or bye-laws—Whether there must be second conviction for same offence—Town Police Clauses Act 1847, s 50. **Bowers v Gloucester Corp** [1963] 1 437, QBD.

Plying for hire—

Mini-cab—Advertisements and telephone number on vehicle—Radio aerial on roof providing two-way communication—Notice reading 'Mini-cab booking' on sun vizor—Metropolitan Public Carriage Act 1869, s 7. **Newman v Vincent** [1962] 2 806, QBD.

Mini-cab—Advertisements and telephone number on vehicle—Radio aerial on roof providing two-way communication—Vehicle parked in bus stand-by—Metropolitan Public Carriage Act 1869, s 7. **Rose v Welbeck Motors Ltd** [1962] 801, QBD.

Motor cars—Plying for hire without being licensed—Vehicles standing in public street—Hire and payment made in adjacent street—No contract with, and no payment to, driver of vehicle—Metropolitan Public Carriage Act 1869, s 7. **Gilbert v McKay** [1946] 1 458, KBD.

Obligation to accept fare while travelling along street—London Hackney Carriage Act 1853, ss 7, 17(2). **Hunt v Morgan** [1948] 2 1065, KBD.

Private hire service—Service advertised but vehicles to be hired not marked or exhibited as such—Hire arranged at office—Metropolitan Public Carriage Act 1869, s 7. **Cogley v Sherwood, Car Hire Group (Skyport) Ltd v Same, Howe v Kavanaugh, Car Hire Group (Skyport) Ltd v Same** [1959] 2 313, QBD.

Standing in any street or place—Standing—Meaning—Something akin to waiting or parking—London Hackney Carriage Act 1853, s 35. **Eldridge v British Airports Authority** [1970] 2 92, QBD.

Standing or place appointed—Plying for hire 'elsewhere than at some standing or place appointed'—Plying for hire in private place—London Hackney Carriages Act 1843, s 33—London Passenger Transport Act 1934, s 112. **Benjamin v Cooper** [1951] 2 907, KBD.

Sign indicating vehicle is a hackney carriage—

What amounts to—Sign complying with bye-laws—Vehicle carrying sign 'M Mosley Wakefield 19'—Whether a distinctive sign indicating vehicle a hackney carriage—Roads Act 1920, s 11(1)—Road Vehicles (Registration and Licensing) Regulations 1941, (S R & O 1941 No 1149), reg 31, Sch V. **Eccles v Kirke** [1949] 1 428, KBD.

Use as express carriage. *See* Express carriage—Use of hackney carriage as an express carriage, *ante*.

Hand signal—

Stopping of vehicle—

Failure to give signal. *See* Stopping of vehicle—Failure to give hand signal, *post*.

Heavy goods vehicle driver's licence—

Application—

Appeal against refusal—Applicant not having driving experience for qualifying period—Licensing authority bound to refuse application—Appeal to justices—Licensing authority ordered to grant licence—Application for certiorari to quash order—Whether applicant 'person aggrieved'—Whether justices having power to make order—Road Traffic Act 1960, s 195(2), Sch 15, para 1. **R v Ipswich Justices, ex parte Robson** [1971] 2 1395, QBD.

Heavy motor car—

Abnormal indivisible load—

Notification to highway and bridge authority—Failure to notify—Whether power to dispense wholly with notice—Motor Vehicles (Authorisation of Special Types) General Order 1969 (S I 1969 No 344), art 28(2). **George Cohen 600 Group Ltd v Hird** [1970] 2 650, QBD.

Undue expense or risk of damage—Expense or risk in dividing the load only to be considered—Load consisting of two separate entities, loaded together to strengthen each other during carriage—Motor Vehicles (Authorisation of Special Types) General Order 1955 (S I 1955 No 1038), art 13. **Sunter Bros Ltd v Arlidge** [1962] 1 510, QBD.

Braking system—

Six-wheeled lorry with four front wheels—Hand-brake operating only on the two rear wheels—Road Traffic Act 1930, s 3—Motor Vehicles (Construction and Use) Regulations 1955 (S I 1955 No 482), reg 39(1), (7)(a)(i). **Langton v Johnson** [1956] 3 474, QBD.

Driving under age. *See* Driving under age—Heavy motor car, *ante*.

Overall length—

Heavy goods motor lorry with container affixed to platform—Container enabling vehicle to carry livestock—Length of vehicle without container thirty feet—Length of vehicle with container thirty-five feet—Whether contravention of Road Traffic Act 1960, s 64(2), and Motor Vehicles (Construction and Use) Regulations 1955 (S I 1955 No 482), reg 6(3), as amended by Motor Vehicles (Construction and Use) (Amendment) Regulations 1961 (S I 1961 No 1313), reg 2(1). **Claude Hughes & Co (Carlisle) Ltd v Hyde** [1963] 1 598, QBD.

ROAD TRAFFIC (cont)**Heavy motor car (cont)—****Overhang—**

Overall length—Pantechnicon with movable tailboard—Tailboard constructed to increase carrying capacity—Permitted overhang exceeded when tailboard down—Whether offence under regulations relating to overall length and overhang—Motor Vehicles (Construction and Use) Regulations 1963 (S I 1963 No 1646), regs 3(1), 41 (as amended by Motor Vehicles (Construction and Use) (Amendment) (No 2) Regulations 1964 (S I 1964 No 1169)). **Guest Scottish Carriers Ltd v Trend** [1967] 3 52, QBD.

Overall length—Pantechnicon with movable tailboard—Permitted overhang exceeded when tailboard down—Road Traffic Act 1930, s 3(1)—Motor Vehicles (Construction and Use) Regulations 1947 (S R & O 1947 No 670), reg 33. **Andrews v H E Kershaw Ltd** [1951] 2 764, KBD.

Registration—

Date of registration—Provisions applicable to vehicles 'registered on or after 1st January, 1932'—Motor Vehicles (Construction and Use) (Amendment) Provisional Regulations 1931, reg 10(ii). **Mackinnon v Peate** [1936] 2 240, KBD.

Weight transmitted to road surface—

Ascertainment of weight—Motor Vehicles (Construction and Use) Regulations 1931 (S R & O 1931 No 4), reg 59. **Prosser v Richings** [1936] 2 1627, KBD.

Highway Code—**Breach of code—**

Contributory negligence. *See* **Negligence** (Contributory negligence—Breach of Highway Code).

Hire or reward—**Carriage of goods—**

Goods vehicle. *See* Goods vehicle—Carriage of goods for hire or reward, *ante*.

Hospital patient—**Breath test. *See* Breath test—Hospital patient, *ante*.**

Failure to provide specimen for laboratory test. *See* Failure to provide specimen for laboratory test—Hospital patient, *ante*.

Specimen for laboratory test to determine blood-alcohol proportion. *See* Specimen for laboratory test to determine driver's blood-alcohol proportion—Hospital patient, *post*.

Hours of duty—

Goods vehicle driver. *See* Goods vehicle—Limitation of driver's time on duty, *ante*.

Indictment—

Joinder of charges. *See* **Indictment** (Joinder of charges—Road traffic).

Insurance—**Motor insurance—**

Generally. *See* **Motor insurance**.

Using vehicle on road without policy of insurance being in force—Accused not driver. *See* **Motor insurance** (Compulsory insurance against third party risks—Using vehicle on road without policy of insurance being in force—Accused not driver).

Using of motor vehicle while uninsured. *See* **Motor insurance** (Compulsory insurance against third party risks—Breach of statutory duty—Owner uninsured).

Laboratory test—

Failure to provide specimen. *See* Failure to provide specimen for laboratory test, *ante*.

Specimen to determine driver's blood-alcohol proportion. *See* Specimen for laboratory test to determine driver's blood-alcohol content, *post*.

Land implement—

Trailer. *See* Trailer—Land implement, *post*.

Learner driver—**Examiner—**

Duty of care. *See* **Negligence** (Duty to take care—Driving examiner).

Instructor—

Contributory negligence—Accident. *See* **Negligence** (Contributory negligence—Road accident—Learner-driver and instructor).

Supervision. *See* Driving licence—Supervision of learner driver, *ante*.

Examiner—

Duty of car. *See* **Negligence** (Duty to take care—Driving examiner).

Licence—**Carrier's licence—**

Goods vehicle. *See* Goods vehicle—Carrier's licence, *ante*.

Driving licence. *See* Driving licence, *ante*.

Excise licence. *See* Excise licence, *ante*.

Goods vehicle—

Special 'A' licence—Conversion of vehicle where licence removed. *See* **Conversion** (Possession—Actual or constructive possession—Lorries let on hire purchase—Special 'A' licences held in respect of the lorries—Lorries wrongfully sold by hirer to third parties, details of lorries being deleted from licences and licences irrevocably lost).

Hackney carriage. *See* Hackney carriage—Licence, *ante*.

Heavy goods vehicle driver's licence. *See* Heavy goods vehicle driver's licence, *ante*.

Operator's licence—

Goods vehicle. *See* Goods vehicle—Operator's licence, *ante*.

Road service licence—

Express carriage. *See* Express carriage—Road service licence, *ante*.

Trade licence. *See* Trade licence, *post*.

Light locomotive—**Construction—**

Relevant date—Lorry converted to carry generating plant—Offence—Drawing trailers—Whether date of conversion relevant date of 'construction'—Road Traffic Act 1930, s 2(1) (b). **Keeble v Miller** [1950] 1 261, KBD.

Light signals. *See* Traffic sign—Light signals, *post*.

ROAD TRAFFIC (cont)

Lighting of vehicles—

Civil liability for breach of duty—

Duty imposed under sanction of penalty—Failure to carry rear light on car during hours of darkness—Whether separate remedy available to person aggrieved—Road Transport Lighting Act 1927, ss 1, 10. *Clark and Wife v Brims* [1947] 1 242, KBD.

Road—

Forecourt of shop adjoining highway—Forecourt used only by customers—No wall between forecourt and highway—Road Transport Lighting Act 1927, ss 1(1), 15. *Thomas v Dando* [1951] 1 1010, KBD.

Limitation of time on duty—

Goods vehicle driver. *See* Goods vehicle—Limitation of driver's time on duty, *ante*.

Mechanically propelled vehicle. *See* Motor vehicle—Mechanically propelled vehicle, *post*.

Mini-cab—

Plying for hire. *See* Hackney carriage—Plying for hire—Mini-cab, *ante*.

Mirror—

Goods vehicle. *See* Goods vehicle—Mirrors, *ante*.

Motor bicycle—

Provisional licence—

Conditions attached to licence—Bicycle not having sidecar attached. *See* Driving licence—Conditions attached to provisional licences—Motor bicycle not having sidecar attached, *ante*.

Sidecar—

Provisional licence—Conditions. *See* Driving licence—Provisional licence—Conditions attached to provisional licences—Motor bicycle not having sidecar attached, *ante*.

Motor cycle—

Crash helmet—

Failure to wear. *See* Negligence (Contributory negligence—Road accident—Crash helmet).

Motor insurance. *See* Motor insurance.

Motor tractor—

Chassis—

Chassis capable of being used for various types of vehicle—Chassis destined to be fitted with fire engine body—Whether chassis a motor tractor—Road Traffic Act 1960, s 253(1), (6). *Millard v Turvey* [1968] 2 7, QBD.

Overall width—

Motor tractor towing land implement on road—Whether one vehicle—Motor Vehicles (Construction and Use) Regulations 1955 (S I 1955 No 482), reg 33—Motor Vehicles (Authorisation of Special Types) General Order 1955 (S I 1955 No 1038), art 10, as amended by Motor Vehicles (Authorisation of Special Types) Order 1956 (S I 1956 No 1265), art 3(2). *William Gwennap (Agricultural) Ltd v Amphlett* [1957] 2 605, QBD.

Motor vehicle—

Articulated vehicle. *See* Articulated vehicle, *ante*.

Carriage of passengers for hire or reward—

Insurance. *See* Motor insurance (Compulsory insurance against third party risks—Passengers carried for hire or reward in private vehicle).

Causing vehicle to be used on road in breach of regulations—

Mens rea of offence—Driver employed by company overloading one of company's vehicles—Company having forbidden drivers to overload vehicles—Knowledge of overloading—Knowledge of company required to be that of someone exercising control over company's affairs—Company having no knowledge of overloading—Whether company having 'caused' vehicle to be used in contravention of regulations—Whether offence absolute—Road Traffic Act 1972, s 40(5)(b). *Ross Hillman Ltd v Bond* [1974] 2 287, QBD.

Dangerous vehicle. *See* Dangerous vehicle, *ante*.

Driving. *See* Driving, *ante*.

Dual purpose vehicle—

Bicycle fitted with auxiliary engine—Use as pedal cycle after removal of essential parts of engine—Need for third-party insurance—Road Traffic Act 1930, ss 1, 35(1). *Lawrence v Howlett* [1952] 2 74, QBD.

Bicycle fitted with auxiliary engine—Use as pedal cycle—No removal of essential parts of engine—Need of third party insurance and driving licence—Road Traffic Act 1930, ss 1, 4(1), 35(1). *Floyd v Bush* [1953] 1 265, QBD.

Duty of driver to take care. *See* Negligence (Duty to take care—Driver of motor vehicle).

Efficient braking system—

Maintenance—Brakes not maintained in good and efficient working order—Accident caused thereby—Whether car 'equipped with efficient braking system'—Motor Vehicles (Construction and Use) Regulations 1937 (S R & O 1937 No 229), reg 34(1). *Cole v Young* [1938] 4 39, KBD.

Efficient working order—

Trailer—Trailer insecurely attached but vehicle trailer and coupling in good repair—Whether in such condition that no danger likely to be caused—Whether in efficient working order—Motor Vehicles (Construction and Use) Regulations 1955 (S I 1955 No 482), reg 73(1). *O'Neill v Brown* [1961] 1 571, QBD.

Excise licence. *See* Excise licence, *ante*.

Goods vehicle. *See* Goods vehicle, *ante*.

Heavy motor car. *See* Heavy motor car, *ante*.

Intended or adapted for use on road—

Dumpers—Use of dumpers on road in housing estate in course of construction—Dumpers not equipped with horns and did not display identity certificate—Whether dumpers intended or adapted for use on roads—Road and Rail Traffic Act 1933, s 36—Road Traffic Act 1930, s 1. *Daley v Hargreaves* [1961] 1 552, QBD.

AD TRAFFIC (cont)

Motor vehicle (cont)—

Intended or adapted for use on road (cont)—

Go-Kart—Mechanically propelled vehicle with engine at rear—Tubular frame mounted on four small wheels and equipped with seat, steering-wheel and column, and silencer—Brakes operating on rear wheels only—Whether vehicle intended or adapted for use on roads—'Intended'—'Adapted'—Road Traffic Act 1960, s 253(1). **Burns v Currell** [1963] 2 297, QBD.

Land implement—

Trailer. *See* Trailer—Land implement, *post*.

Latent defect—

Defence. *See* **Negligence** (Defence—Latent defect—Motor vehicle).

Light locomotive. *See* Light locomotive, *ante*. 195010261

Lighting. *See* Lighting of vehicles, *ante*.

Mechanically propelled vehicle—

Car with no engine—Possibility that engine might shortly be replaced and motive power restored—Vehicles (Excise) Act 1949, ss 1, 15. **Newberry v Simmonds** [1961] 2 318, QBD.

Incapable of being driven—Car with incomplete engine, no batteries, no gearbox, three flat tyres and one tyre missing, incapable of movement under its own power—Repairs necessary to put car into running order out of all proportion to its value—Vehicles (Excise) Act 1949, s 15(1), as amended by Finance Act 1959, s 10(1), Sch 3, para 1(1)(6)—Road Traffic Act 1960, ss 201(1), 253(1). **Smart v Allan** [1962] 3 893, QBD.

Motor tractor. *See* Motor tractor, *ante*.

Negligence. *See* **Negligence** (Vehicles).

Overall length—

Articulated vehicle. *See* Articulated vehicle—Overall length, *ante*.

Heavy motor car. *See* Heavy motor car—Overall length, *ante*.

Overall width—

Motor tractor. *See* Motor tractor—Overall width, *ante*.

Overhang—

Heavy motor car. *See* Heavy motor car—Overhang, *ante*.

Permitting vehicle to be used on road in breach of regulations—

Knowledge of user—Limited company—Trailer used with defective brake—Need to prove knowledge before permitting user could be established—Motor Vehicles (Construction and Use) Regulations 1951 (S I 1951 No 2101), reg 75, reg 101. **James & Son Ltd v Smeed, Green v Burnett** [1954] 3 273, QBD.

Public service vehicle. *See* Public service vehicle, *post*.

Sale by thief—

Purchaser effecting extensive repairs to vehicle—Court order that vehicle to be returned to true owner—Liability of true owner to compensate purchaser for work done. *See* **Restitution** (Unjust enrichment—Compensation—Work done on property of another).

Sale in unroadworthy condition—

Offer to sell—Offence—Sale of vehicle by auction—Auctioneer inviting bids for vehicle—Whether auctioneer 'offering to sell' vehicle—Road Traffic Act 1960, s 68(1) (as amended by the Road Traffic Act 1962, s 51(1), Sch 4, Part I). **British Car Auctions Ltd v Wright** [1972] 3 462, QBD.

Right of action for breach of statutory requirements—Car sold with defective brakes—Accident caused thereby—Statutory liability of vendor—Penalty prescribed by statute—No right of action to purchaser for vendor's statutory offence—Road Traffic Act 1930, ss 3, 59, 113(2)—Road Traffic Act 1934, s 8—Motor Vehicles (Construction and Use) Regulations 1937, (S R & O 1937 No 229), regs 39(1), 68—Motor Vehicles (Construction and Use) (Amendment No 2) Provisional Regulations 1938, reg 7. **Badham v Lambs Ltd** [1945] 2 295, KBD.

Seat belt—

Failure to wear—Contributory negligence. *See* **Negligence** (Contributory negligence—Road accident—Seat belt).

Special type—

Two tractors carrying abnormal indivisible load—Whether one vehicle—How many attendants necessary—Road Traffic Act 1930, s 17(1)—Motor Vehicles (Authorisation of Special Types) General Order 1955 (S I 1955 No 1038), art 18. **Dixon v B R S (Pickfords) Ltd** [1959] 1 449, QBD.

Two trailers drawn by one locomotive carrying abnormal indivisible load with another locomotive in attendance—Maximum total weight of trailers and load over forty tons—Overall width exceeding nine feet six inches—Total of four persons in attendance—Whether effect of non-compliance as to number of attendants contravened condition as to maximum total weight—Motor Vehicles (Construction and Use) Regulations 1955 (S I 1955 No 482), reg 66—Motor Vehicles (Authorisation of Special Types) General Order 1955 (S I 1955 No 1038), art 14—Road Traffic Act 1960, s 64(1), (4). **Siddle C Cook Ltd v Holden** [1962] 3 984, QBD.

Stage carriage. *See* Stage carriage, *post*.

Stopping at school crossings. *See* School crossing—Stopping of motor vehicles, *post*.

Taking vehicle without authority. *See* Taking vehicle without authority, *post*.

Test. *See* Vehicle test, *post*.

Tyres. *See* Tyres, *post*.

Unladen weight—

Wooden container attached to base of lorry—Whether 'alternative body'—Road Traffic Act 1930, s 26—Motor Vehicles (Construction and Use) Regulations 1951 (S I 1951 No 2101), regs 61, 63(2), 101. **Cording v Halse** [1954] 3 287, QBD.

Unlicensed vehicle. *See* Excise licence—Unlicensed vehicle, *ante*.

ROAD TRAFFIC (cont)

Motor vehicle (cont)—

Using vehicle on road in breach of regulations—

Driver of vehicle—Accident due to improper loading—Whether driver liable as user of vehicle—Motor Vehicles (Construction and Use) Regulations 1937 (S R & O 1937 No 229), regs 67(2), 94. *Gifford v Whittaker* [1942] 1 604, KBD.

Hire of vehicle—Lorry hired with driver from haulage contractors by quarry owners—Lorry loaded with tarmac at quarry owners' works—Quarry owners responsible for correct weight of lorry leaving works—Lorry overloaded and driven on road by haulage contractors' driver—Whether quarry owners were 'using' lorry at the time—Whether contravention by them of Road Traffic Act 1960 s 64(2), as amended by Road Traffic Act 1962, s 8, Sch 1, Pt 2, para 19—Motor Vehicles (Construction and Use) Regulations 1966 (S I 1966 No 1288), reg 70(1). *Windle v Dunning & Son Ltd* [1968] 2 46, QBD.

Mens rea—Motor van driven with defective brake—Absolute offence—Motor Vehicles (Construction and Use) Regulations 1951 (S I 1951 No 2101), regs 75, 101. *James & Son Ltd v Smea, Green v Burnett* [1954] 3 273, QBD.

Owner of vehicle—Liability—Vehicle being driven on road by third party at owner's request—Whether owner using vehicle—Road Traffic Act 1960, s 64(2), as substituted by the Road Traffic (Amendment) Act 1967, s 6(1). *Crawford v Haughton* [1972] 1 535, QBD.

Motorway—

Restrictions on stopping—

Emergency—Stopping on verge—Stopping by reason of any accident, illness or other emergency—Meaning of emergency—Sudden occurrence not essential—Necessity of showing that danger alleged to constitute emergency not foreseeable before proceeding on to motorway—Driver overcome by drowsiness—Motorways Traffic Regulations 1959 (S I 1959 No 1147), regs 7(2), 9. *Higgins v Bernard* [1972] 1 1037, QBD.

Restrictions on stopping of vehicles—

Remaining at rest on carriageway—Carriageway—Vehicle parked on hard shoulder of motorway—Hard shoulder part of 'verge' not carriageway—Hard should distinguished from 'marginal strip'—Marginal strip part of carriageway—Motorways Traffic Regulations 1959 (S I 1959 No 1147), regs 3(1)(a),(d),(h), 7(1). *Wallwork v Rowland* [1972] 1 53, QBD.

Negligence—

Contributory negligence—

Child. *See* **Child** (Negligence—Contributory negligence).

Damages—

Loss of consortium. *See* **Damages** (Personal injury—Consortium—Impairment of consortium—Wife injured in accident for which defendant liable).

Nervous shock. *See* **Damages** (Personal injury—Nervous shock—Wife witnessing accident in which husband and children injured).

Driving of motor vehicle—

Vicarious liability—Principal and agent. *See* **Vicarious liability** (Principal and agent).

Exclusion of liability—

Public service vehicle. *See* **Carriers** (Negligence—Exclusion of liability).

Highway. *See* **Negligence** (Highway).Vehicles. *See* **Negligence** (Vehicles).

Notice of intended prosecution—

Contravention of pedestrian crossing regulations—

Obligation to give notice—Whether requirement to give notice need be complied with—Road Traffic Act 1960, ss 14(1), 241—Road Traffic Regulation Act 1967, s 23(1)(5)—'Pelican' Pedestrian Crossings Regulations and General Directions 1969, (S I 1969 No 888). *Sulston v Hammond* [1970] 2 830, QBD.

Limited company—

Name of company in notice—Inaccuracy—Company registered as owner of vehicle—Omission of 'limited' from company's name in notice—Validity of notice—Road Traffic Act 1930, s 21(c). *Springate v Questier* [1952] 2 21, QBD.

Notice sent to defendant's residence by registered post—

Defendant away on holiday unknown to police—Notice received by person in defendant's employ—Road Traffic Act 1930, s 21(c)—Interpretation Act 1889, s 26. *Layton v Shires* [1959] 3 587, QBD.

Defendant away on holiday unknown to police—Notice returned to police undelivered—Defendant bus driver employed by London Transport Executive—Not warned of prosecution at the time offence committed—No notice served on London Transport Executive as registered owners of vehicle—Whether notice served on defendant—Whether case within exemption from requirement of service—Road Traffic Act 1889, s 26. *Bear v Davies* [1958] 2 255, QBD.

Defendant in hospital to knowledge of police—Notice received by defendant's wife—Notice not communicated to defendant—Road Traffic Act 1960, s 241(2)(c)(i). *Hosier v Goodall* [1962] 1 30, QBD.

Defendant in hospital to knowledge of police—Notice returned marked 'unable to deliver'—Fresh notice served personally out of time—Whether adequate notice—Road Traffic Act 1930, s 21. *Stanley v Thomas* [1939] 2 636, KBD.

Defendant known to be in hospital at time as result of accident—Defendant's wife living at defendant's residence—Road Traffic Act 1930, s 21(c)—Interpretation Act 1889, s 26. *Sandland v Neale* [1955] 3 571, QBD.

Notice sent eleven days after commission of the offence—Defendant known to be then seriously ill in hospital—Road Traffic Act 1930, s 21(c). *Holt v Dyson* [1950] 2 840, KBD.

Notice to firm instead of individual—

Driver of car unknown to police—Inaccurate information regarding owner of car given to police by local taxation officer—Notice of intended prosecution sent to firm of which owner was member instead of to owner—Notice to firm not notice to individual member of firm—Reasonable diligence shown by police—Road Traffic Act 1930, ss 11, 21. *Clarke v Mould* [1945] 2 551, KBD.

AD TRAFFIC (cont)

Notice of intended prosecution (cont)—

Objection that notice not given—

Alternatives of service on driver or registered owner—Non-compliance with both alternatives must be proved in order to establish defence—Road Traffic Act 1960, s 241(2),(3). **Sanders v Scott** [1961] 2 403, QBD.

Procedure—Whether issue must be raised as preliminary point—Road Traffic Act 1930, s 21. **R v Edmonton Justices, ex parte Brooks** [1960] 2 475, QBD.

Service of notice—

Notice deemed to have been served—Receipt after more than 14 days—Road Traffic Act 1960, s 241(2)(c), as amended by Road Traffic Act 1962, s 51 and Sch 4. **Groome v Driscoll** [1969] 3 1638, QBD.

Notice handed to defendant's wife at defendant's home when defendant not in house—Defendant's wife authorised to accept letters for him—Notice handed by defendant's wife to him within fourteen days—Whether compliance with statute—Road Traffic Act 1960, s 241(2)(c)(ii), as amended by Road Traffic Act 1962, s 51(1) and Sch 4, Pt 1. **Burt v Kirkcaldy** [1965] 1 741, QBD.

Notice sent to defendant's residence by registered post. *See* Notice of intended prosecution—Notice sent to defendant's residence by registered post, *ante*.

Service within 14 days—Computation of time—'Within fourteen days' of commission of alleged offence—Computation of time for service—Offence committed on 11th January—Notice sent by registered post on 24th January, and delivered on 25th January—Road Traffic Act 1930, s 21(c). **Stewart v Chapman** [1951] 2 613, KBD.

Service within 14 days—Notice sent by recorded delivery service—Notice despatched on 14th day—Notice not capable of being delivered within 14 day period in ordinary course of post—Validity—Road Traffic Act 1960, s 241(2), as amended by the Road Traffic Act 1962, s 51 and Sch 4. **Nicholson v Tapp** [1972] 3 245, QBD.

Specification of nature of alleged offence—

Sufficiency—Notice referring to 'offence against s 12 of Road Traffic Act 1930'—No reference to driving without due care and attention or without due consideration—Road Traffic Act 1930, ss 12(1), 21(c). **Venn v Morgan** [1949] 2 562, KBD.

Specification of time of alleged offence—

Time of alleged offence wrongly stated—Validity of notice—Road Traffic Act 1930, s 21(c). **Pope v Clarke** [1953] 2 704, QBD.

Warning at time offence committed—

Time—Warning given one and a half hours after the alleged offence was committed—Whether it was given at the time the offence was committed—Road Traffic Act 1930, s 21. **Jollye v Dale** [1960] 2 369, QBD.

Withdrawal—

Intimation by police, subsequent to notice, stating that no further action would be taken—Further subsequent intimation that a prosecution would be instituted—Whether original notice still effective to enable court to convict—Road Traffic Act 1930, s 21. **Lund v Thompson** [1958] 3 356, QBD.

Obstruction—

London—

Arrest—Motor car left in thoroughfare—Persistent refusal by owner to remove car after repeated requests by police officer—Power of police officer to arrest owner without warrant—Metropolitan Police Act 1839, s 54, para 6—Prevention of Crimes Amendment Act 1885, s 2. **Gelberg v Miller** [1961] 1 291, QBD.

Parking place—

Part of road designated by local authority as parking place within certain hours—Garage proprietors using parking place during permitted hours for parking vehicles from garage—Whether vehicles an unnecessary obstruction in contravention of Motor Vehicles (Construction and Use) Regulations 1955 (S I 1955 No 482), reg 89. **W R Anderson (Motors) Ltd v Hargreaves** [1962] 1 129, QBD.

Prevention of obstruction of streets. *See* Regulation of traffic—Prevention of obstruction of streets, *post*.

Public service vehicle left in thoroughfare—

Causing vehicle to stand on road so as unnecessarily to obstruct road—Driver's spell of duty finished—Left vehicle at bus stop—Relief driver late—Traffic held up in interval before relief driver arrived—Whether driver who left vehicle remained person in charge of vehicle until relief driver took over—Public Service Vehicles (Conduct of Drivers, Conductors and Passengers) Regulations 1936 (S R & O 1936 No 619), reg 7—Motor Vehicles (Construction and Use) Regulations 1955 (S I 1955 No 482), reg 89. **Ellis v Smith** [1962] 3 954, QBD.

Offence—

Aiding and abetting—

Accittal of principal—Motor omnibus driver charged with driving without due care and attention and charge dismissed—Conductor of same vehicle charged with aiding and abetting offence alleged against driver—Conductor convicted—Validity of conviction—Road Traffic Act 1930, s 12(1). **Thornton v Mitchell** [1940] 1 339, KBD.

Duty to give information—

Duty of any person to give information which it is in his power to give and may lead to identification of driver—Doctor—Information obtained by doctor in professional capacity—Whether 'any...person' to be construed restrictively so as not to include doctor under professional duty of confidence—Whether 'in (doctor's) power' to disclose information—Road Traffic Act 1972, s 168(2)(b). **Hunter v Mann** [1974] 2 414, QBD.

Offence against regulations made under repealed statute—Whether regulations became part of replacing statute—Whether offence against regulations an offence against the statute—Road Traffic Act 1930, s 30—Road Traffic Act 1960, ss 64, 232(2)(a)—Motor Vehicles (Construction and Use) Regulations 1955 (S I 1955 No 482), reg 89, reg 104. **Rathbone v Bundock** [1962] 2 257, QBD.

ROAD TRAFFIC (cont)

Offence (cont)—

Duty to give information (cont)—

Owner—Request to give name and address of driver—Right of owner to be told nature of offence before giving information—Road Traffic Act 1930, s 113(3)(b). **Pulton v Leader** [1949] 2 747, KBD.

Request signed by police inspector—Authority to sign notice given orally to inspector by superintendent of police—Whether delegation of authority from chief of police—Exception to maxim delegatus non potest delegare—Road Traffic Act 1960, s 232(2)(a). **Nelms v Roe** [1969] 3 1379, QBD.

Request signed by police sergeant—Delegation of authority from a chief officer of police—Road Traffic Act 1960, s 232. **Record Tower Cranes Ltd v Gisbey** [1969] 1 418, QBD.

Self-incrimination—Driver of vehicle—Whether driver under obligation to give information to incriminate himself—Road Traffic Act 1960, s 232(2)(b). **Bingham v Bruce** [1962] 1 136, QBD.

Vehicle owner's obligation—Whether vehicle involved in alleged offence—Burden of proof—Road Traffic Act 1960, s 232(3). **Neal v Fior** [1968] 3 865, QBD.

Prosecution—

Driver and owner—Goods vehicle—Licence—Prosecution of driver as well as owner—Undesirability—Road and Rail Traffic Act 1933, s 1(1)—Vehicles (Excise) Act 1949, s 13(1). **Carpenter v Campbell** [1953] 1 280, QBD.

Separate offences—

Convictions of two separate offences on same facts—Obstruction—Contravention of waiting regulations—One conviction quashed—Motor Vehicles (Construction and Use) Regulations 1955 (S I 1955 No 482), reg 89—London Traffic (Restriction of Waiting) (Station Parade, Gerrards Cross) Regulations 1952 (S I 1952 No 1294), reg 3. **R v Burnham Justices, ex parte Ansorge** [1959] 3 505, QBD.

Summary offence—

Conspiracy—Goods vehicle—Driver—Limitation of time on duty—Record of hours worked—Offences triable summarily—Whether conspiracy to commit offences can be made subject of indictment—Road Traffic Act 1960, ss 73(1),(3), 186(1),(6)—Goods Vehicles (Keeping of Records) Regulations 1935 (S R & O 1935 No 314), reg 6. **R v Blamires Transport Services Ltd** [1963] 3 170, CCA.

Summary proceedings—

Attempt to take and drive away vehicle without consent—Attempt to commit indictable offence—Whether attempt triable summarily—Road Traffic Act 1930, s 28(1)—Criminal Justice Act 1925, s 24(1) Sch 11 para 17. **R v Fussell** [1951] 2 761, CCA.

Summons or information—

Discretion of prosecutor—Application for summons for careless driving—Refusal on ground information for dangerous driving should be laid—Mandamus to issue summons. **R v Nuneaton Justices, ex parte Parker** [1954] 3 251, QBD.

Omnibus—

Injury to passenger while alighting. *See Negligence* (Vehicles—Passenger injured while alighting from omnibus).

Stage carriage. *See Stage carriage, post.*

Omnibus service—

Alteration of London service. *See London Transport Executive* (Duty to consult with local authorities before altering bus services).

Operator's licence—

Goods vehicle. *See Goods vehicle—Operator's licence, ante.*

Overall length—

Articulated vehicle. *See Articulated vehicle—Overall length, ante.*

Heavy motor car. *See Heavy motor car—Overall length, ante.*

Overall width—

Motor tractor. *See Motor tractor—Overall width, ante.*

Overhang—

Heavy motor car. *See Heavy motor car—Overhang, ante.*

Overtaking—

Zebra crossing. *See Pedestrian crossing—Zebra crossing—Overtaking, post.*

Parking—

Blood-alcohol proportion above prescribed limit—

Special reason for not disqualifying. *See Special reasons for not disqualifying—Driving with blood-alcohol proportion above prescribed limit—Parking, post.*

Negligence—

Parking on highway. *See Negligence* (Highway—Parking on highway).

Unlighted vehicle—

Nuisance. *See Nuisance* (Highway—Unlighted vehicle on highway).

Parking place—

Leaving vehicle otherwise than as authorised—

Meter charge payable on leaving vehicle in parking place—Driver leaving vehicle for a few minutes while obtaining change to enable him to put coin in meter—Returned at once to pay the charge—Whether driver guilty of offence of failing to pay initial charge—Parking Places (Westminster) (No 1) Order 1959, art 8(1)—Road Traffic Act 1956 s 22(1). **Strong v Dawtry** [1961] 1 926, QBD.

Obstruction. *See Obstruction—Parking place, ante.*

Particulars of accident—

Duty to stop and furnish particulars. *See Accident—Duty to stop and furnish particulars, ante.*

Passenger—

Due consideration—

Careless driving. *See Careless driving—Due consideration for other persons using road—Passengers in vehicle, ante.*

Duty of driver to take care. *See Negligence* (Duty to take care—Driver of motor vehicle—Duty to passenger in vehicle).

AD TRAFFIC (cont)**Passenger (cont)—**

Exclusion of liability to passenger. *See Negligence* (Volenti non fit injuria—Consent to risk of injury—Agreement to exclude liability—Passenger in vehicle).

Omnibus—

Injury while alighting from bus. *See Negligence* (Vehicles—Passenger injured while alighting from omnibus).

Volenti non fit injuria—

Knowledge of risk. *See Negligence* (Volenti non fit injuria—Knowledge of risk—Passenger in car).

Passengers—

Express carriage. *See Express carriage, ante.*

Stage carriage—

Excess of prescribed maximum. *See Stage carriage—Number of standing passengers in excess of prescribed maximum, post.*

Pedestrian crossing—**Accident—**

Failure of motorist to stop before reaching crossing—Contributory negligence—Whether duty of pedestrian altered by reason of black-out—Pedestrian Crossing Places (Traffic) Provisional Regulations 1939, regs 3, 4, 7. **Knight v Sampson** [1938] 3 309, KBD, **Sparks v Edward Ash Ltd** [1943] 1 1, CA.

Failure of motorist to stop before reaching crossing—Contributory negligence of pedestrian—Availability of defence—Pedestrian Crossing Places (Traffic) Provisional Regulations 1935, regs 3, 4. **Bailey v Geddes** [1937] 3 671, CA.

Contravention of regulations—

Notice of intended prosecution. *See Notice of intended prosecution—Contravention of pedestrian crossing regulations, ante.*

Controlled crossing—

Applicability of regulations—Pedestrian Crossing Places (Traffic) Provisional Regulations 1935, regs 3, 4, 5. **Chisholm v London Passenger Transport Board** [1938] 4 850, CA.

Crossing with refuge—Whether refuge part of crossing—Pedestrian stepping from refuge—Contributory negligence—Pedestrian Crossing Places (Traffic) Provisional Regulations 1935, regs 2, 3, 4, 5. **Wilkinson v Chetham-Strode** [1940] 2 643, CA.

Duty of approaching driver—Interrupted view of crossing—Injury to foot passenger thereon—Pedestrian Crossing Places (Traffic) Regulations 1941 (S R 20 1941 No 397), reg 3. **London Passenger Transport Board v Upson** [1949] 1 60, HL.

Duty of driver—

Right to proceed when satisfied that persons crossing are out of danger. **Kayser v London Passenger Transport Board** [1950] 1 231, KBD.

Uncontrolled crossing—

Failure of motorist to stop before reaching crossing—Limits of crossing—Approach studs—Whether motor car is within limits of crossing when it has crossed approach studs—Pedestrian Crossings Regulations 1954 (S I 1954 No 370), reg 4. **Hughes v Hall** [1960] 2 504, QBD.

Failure to accord precedence to foot-passenger—Latent mechanical defect—Control of vehicle taken from driver by occurrence of event outside his possible or reasonable control and in respect of which he is not at fault—Whether breach of obligation to allow precedence—Pedestrian Crossing Regulations 1954 (S I 1954 No 370), reg 4. **Burns v Bidder** [1966] 3 291, QBD.

Failure to accord precedence to foot-passenger—Waiver of precedence—Whether pedestrian had waived precedence—Pedestrian Crossing Regulations 1954 (S I 1954 No 370), reg 4. **Neal v Bedford** [1965] 3 250, QBD.

Precedence to foot-passenger—Failure of motorist to stop before reaching crossing—Interrupted view of crossing—Liability of motorist—Pedestrian Crossings Regulations 1954 (S I 1954 No 370), reg 4. **Gibbons v Kahl** [1955] 3 345, QBD.

Precedence to foot-passenger—Precedence not accorded—Driver not negligent—Liability of driver—Pedestrian Crossings (London) Regulations 1951 (S I 1951 No 1193), reg 4. **Leicester v Pearson** [1952] 2 71, QBD.

Zebra crossing—

Overtaking—Prohibition—Stationary vehicle stopped for purpose of complying with regulations—Regulations requiring vehicle driver to give precedence to pedestrian on carriageway within limits of uncontrolled zebra crossing—Offence to overtake stationary vehicle—Pedestrian on pavement adjacent to crossing—Vehicle stopping to allow pedestrian to cross—Defendant overtaking stationary vehicle before pedestrian having stepped on to crossing—Whether stationary vehicle stopped 'for purpose of complying with' regulations—Whether an offence to overtake vehicle before pedestrian on crossing—'Zebra' Pedestrian Crossings Regulations 1971 (S I 1971 No 1524), regs 8, 10(b). **Gullen v Ford** [1975] 2 24, QBD.

Permitting vehicle to be used on road in breach of regulations. *See Motor vehicle—Permitting vehicle to be used on road in breach of regulations, ante.*

Plating and test certificates for goods vehicles—**Exemption—**

Tower wagon—Meaning—Vehicle into which there is built any expanding or extensible contrivance—Contrivance designed for facilitating erection, inspection, repair or maintenance of overhead structures or equipment—Vehicle not constructed or adapted for use nor used for conveyance of loads except contrivance and articles used in connection therewith—Vehicle used for erection of street lighting—Converted goods vehicle—Body removed from chassis—Extensible contrivance fitted behind car with platform for carrying tools and equipment—Vehicle used to carry concrete pillars intended to form part of street lights—Whether vehicle a 'tower wagon'—Vehicles (Excise) Act 1971, Sch 4, para 9(1)—Goods Vehicles (Plating and Testing) Regulations 1971 (S I 1971 No 352), reg 4(2), Sch 2, Item 6. **Anderson and Heeley Ltd v Paterson** [1975] 1 523, QBD.

ROAD TRAFFIC (cont)

Plating and test certificates for goods vehicles (cont)—

Exemption (cont)—

Trailer temporarily in Great Britain—Trailer owned by United Kingdom company—Trailer used for carrying goods between England and Continent—Presence in England intermittent, but regular and repeated—Whether 'temporarily in Great Britain'—Road Safety Act 1967, ss 9, 14(1), (2)—Goods Vehicles (Plating and Testing) Regulations 1968 (S.I. 1968 No 601), reg 3(2), Sch 2, class 27. **British Road Services Ltd v Wurzel** [1971] 3 480, QBD.

Plying for hire—

Hackney carriage. *See* Hackney carriage—Plying for hire, *ante*.

Police—

Exemption from speed limits. *See* Excessive speed—Exemption—Police, *ante*.

Report to police—

Accident. *See* Accident—Duty to stop and furnish particulars—Report to police, *ante*.

Private carrier's licence—

Goods vehicle. *See* Goods vehicle—Private carrier's licence, *ante*.

Prosecution—

Offence. *See* Offence—Prosecution, *ante*.

Provisional licence—

Conditions attached. *See* Driving licence—Conditions attached to provisional licences, *ante*.

Disqualification. *See* Disqualification for holding licence—Provisional licence, *ante*.

Public carrier's licence—

Goods vehicle. *See* Goods vehicle—Public carrier's licence, *ante*.

Public service vehicle—

Negligence—

Exclusion of liability—Free pass. *See* Carriers (Negligence—Exclusion of liability—Passengers—Free pass).

Generally. *See* Negligence (Vehicles—Public service vehicle).

Obstruction—

Vehicle left in thoroughfare. *See* Obstruction—Public service vehicle left in thoroughfare, *ante*.

Road service licence—

Breach of condition—Wilful breach by servant of condition attached to licence—Liability of employer—Road Traffic Act 1960, ss 134(3), 136(1). **G Newton Ltd v Smith, W C Standerwick Ltd v Same** [1962] 2 19, QBD.

Stage carriage. *See* Stage carriage, *post*.

Suspension of licence—

Power of commissioners—Suspension for a fixed period—Power to suspend licence if operator appears not to be a fit person—Maintenance of vehicles below standard—Commissioners expressing view that operator ought to be penalised for past failures in respect of maintenance—No power to impose suspension by way of penalty—Appeal to Secretary of State—Power of Secretary of State to confirm suspension on basis that facts found showing operator not a fit person—Propriety of suspension for a fixed period—Road Traffic Act 1960, s 127(7) (as amended by the Transport Act 1968, s 35(1)). **Robinson v Secretary of State for the Environment** [1973] 3 1045, QBD.

Public transport—

British Transport Commission—

Delegation of powers to transport executive—Extent of powers and validity of delegation—Road Traffic Act 1930, s 72(1)—Transport Act 1947, ss 2(1)(a), (3), 3(1), 12(1), 14(2), (4), 65(1). **Smith v London Transport Executive** [1951] 1 667, HL.

Local authority—

Authority operating omnibus undertaking under local Act—Revenue to be applied in maintaining omnibuses, garages etc—New omnibuses required for replacement or as additions—Purchase out of capital or revenue—Mynyddislwyn Urban District Council Act 1926, ss 90, 91. **Attorney-General v West Monmouthshire Omnibus Board** [1947] 1 248, ChD.

Generally. *See* Local authority (Transport).

London Passenger Transport Board. *See* London Passenger Transport Board.

London Transport Executive. *See* London Transport Executive.

Service provided by commission or agent on commission—

Share capital of company actually providing service acquired by British Transport Commission—Services of company—Whether provided by commission—Transport Act 1947, s 65(1). **R v South Wales Traffic Licensing Authority, ex parte Ebbw Vale Urban District Council** [1951] 1 806, CA.

Reasonable excuse—

Failure to provide specimen for laboratory test. *See* Failure to provide specimen for laboratory test—Reasonable excuse, *ante*.

Recovery vehicle—

Trade licence. *See* Trade licence—Motor trader—Recovery vehicle, *post*.

Registration—

Heavy motor car. *See* Heavy motor car—Registration, *ante*.

Regulation of traffic—

Parliament—

Neighbourhood of Parliament. *See* Parliament (Prevention of obstruction of streets in neighbourhood of Parliament).

Prevention of obstruction of streets—

Any occasion when streets thronged or liable to be obstructed—One-way traffic system for all vehicles in two streets—Order by local authority—For six months' holiday season—'Route' to be observed—Town Police Clauses Act 1847, s 21. **Brownsea Haven Properties Ltd v Poole Corpn** [1958] 1 205, CA.

Order restricting sale of confectionery, etc—Restricted hours not specified—Validity—Town Police Clauses Act 1847, s 21. **Etherington v Carter** [1937] 2 528, KBD.

Removal of disqualification. *See* Disqualification for holding licence—Removal, *ante*.

ROAD TRAFFIC (cont)

Requirement to take breath test. *See* Breath test—Requirement to take test, *ante*.

Road—**Car park—**

Private footpath leading from car park—Footpath used by members of bowling club and holders of allotment gardens but not by general public—Whether car park itself, or as part of private footpath, a 'road'—Road Traffic Act 1930, s 121. *Griffin v Squires* [1958] 3 468, QBD.

Lighting of vehicles. *See* Lighting of vehicles—Road, *ante*.

Public access—

Road within premises of Port of London Authority—Passes required to enter dock area—Unauthorised persons refused admission—Whether a 'road to which the public has access'—Road Traffic Act 1930, s 121(1). *Buchanan v Motor Insurers' Bureau* [1955] 1 607, QBD.

Using vehicle on road without insurance policy being in force. *See* Motor insurance (Compulsory insurance against third party risks—

Vehicle intended or adapted for use on road. *See* Motor vehicle—Intended or adapted for use on road, *ante*.

Road service licence—

Express carriage. *See* Express carriage—Road service licence, *ante*.

Public service vehicle. *See* Public service vehicle—Road service licence, *ante*.

Sale of car in dangerous condition—**Negligence—**

Defect discoverable by reasonable diligence. *See* Negligence (Dangerous things—Defect discoverable by reasonable diligence—Car in dangerous condition).

Sale of vehicle in unroadworthy condition. *See* Motor vehicle—Sale in unroadworthy condition, *ante*.

School crossing—**Stopping of motor vehicles—**

Motorist's obligation to stop where prescribed sign exhibited—Vehicle to be stopped 'so as not to stop or impede (children) crossing'—Motorist proceeding while sign exhibited but after children past his side of the road—Whether an offence—Road Traffic Regulation Act 1967, s 25(1),(2). *Franklin v Langdown* [1971] 3 662, QBD.

Necessity for patrol to exhibit stop sign to view of oncoming traffic—Road Traffic Act 1960, s 48(1),(2). *Hoy v Smith* [1964] 3 670, QBD.

Seat belt—**Failure to wear—**

Contributory negligence. *See* Negligence (Contributory negligence—Road accident—Seat belt).

Sign—

Traffic sign. *See* Traffic sign, *post*.

Signal—**Stopping of vehicle—**

Failure to give hand signal. *See* Stopping of vehicle—Failure to give hand signal, *post*.

Skid—

Negligence. *See* Negligence (Vehicles—Skid).

Special occasion—

Express carriage. *See* Express carriage—Special occasion, *ante*.

Stage carriage. *See* Stage carriage—Special occasion, *post*.

Special reasons—**Disqualification—**

Special reasons for not disqualifying—Driving while unfit. *See* Driving while unfit through drink or drugs—Special reasons for not disqualifying, *ante*.

Special reasons for not disqualifying—**Causing death by dangerous driving—**

Ambulance driver taking urgent case to hospital—Driver told to hurry—Life of unborn baby and mother depending on speed at which hospital reached—Driver crossing traffic lights at red—Collision with motor scooter killing rider—Plea of guilty to causing death by dangerous driving—Special reasons why driver should not be disqualified—Road Traffic Act 1962, s 5(1). *R v Lundt-Smith* [1964] 3 225, Assizes.

Driving while unfit through drink or drugs—

Driver fit when commencing journey—Stopping car on feeling effects of drink—Road Traffic Act 1930, s 15(2). *Duck v Peacock* [1949] 1 318, KBD.

Driving while unfit through drink or drugs. *See* Driving while unfit to drive through drink or drugs—Special reasons for not disqualifying, *ante*.

Driving with blood-alcohol proportion above prescribed limit—

Addition to driver's drink without his knowledge—Proof that addition accounted for excess over prescribed limit—Onus of proof—Onus on driver to prove on balance of probabilities that addition accounted for excess—Circumstances in which necessary for driver to adduce medical evidence—Road Traffic Act 1962, s 5(1)—Road Safety Act 1967, s 1(1). *Pugsley v Hunter* [1973] 2 10, QBD.

Amount of excess—Whether amount of excess a special reason for not disqualifying—Road Traffic Act 1962, s 5(1)—Road Safety Act 1967, ss 1(1), 5(2)(a). *Delaroy-Hall v Tadmam* [1969] 1 25, QBD.

Driver's ability impaired through also taking drugs—No knowledge of potential risk—Road Traffic Act 1962, s 5(1)—Road Safety Act 1967, s 1(1). *R v Scott* [1969] 2 450, CA.

Emergency—Reasons of emergency compelling driver to drive with too much alcohol in blood—Factors to be considered in determining whether driver should not be disqualified—Road Traffic Act 1972, s 93(1). *Taylor v Rajan* [1974] 1 1087, QBD.

Ignorance of combined effect of small consumption of alcohol with inhalation of fumes with alcoholic content—Road Traffic Act 1960, s 6(1)—Road Traffic Act 1962, s 5(1). *Brewer v Metropolitan Police Comr* [1969] 1 513, QBD.

ROAD TRAFFIC (cont)

Special reasons for not disqualifying (cont)—

Driving with blood-alcohol proportion above prescribed limit (cont)—

Non-impairment of driving ability—Accident not the fault of accused—Road Safety Act 1967, s 1(1). **Taylor v Austin** [1969] 1 544, QBD.

Non-impairment of driving ability—Liver condition unknown to driver—Road Traffic Act 1962, s 5(1)—Road Safety Act 1967, ss 1(1), 3(3)(a). **R v Jackson** [1969] 2 453, CA.

Non-impairment of driving ability—Medical emergency—Evidence to support plea not to disqualify—Grounds for finding special reasons to be stated—Road Traffic Act 1962, ss 5(1), 9. **Brown v Dyerson** [1968] 3 39, QBD.

Parking—Driving vehicle from one parking place to another—Driving vehicle few yards from highway on to private drive—Road Traffic Act 1962, s 5(1)—Road Safety Act 1967, s 1(1). **James v Hall** [1972] 2 59, QBD.

Parking—Driving vehicle from one parking place to another—Driving vehicle 200 yards along busy street—Potential danger to other road users—Road Traffic Act 1962, s 5(1)—Road Safety Act 1967, s 1(1). **Coombs v Kehoe** [1972] 2 55, QBD.

Evidence—

Plea of guilty—Duty of justices to hear evidence as to matters said to constitute special reasons—Road Traffic Act 1930, s 15(2). **Jones v English** [1951] 2 85, KBD.

Using vehicle on road without insurance policy being in force. *See* Motor insurance (Disqualification for using etc vehicle on road without policy being in force).

What are special reasons—

Reasons special to facts of case—Mitigating or extenuating circumstances—Circumstances peculiar to offender not special reason—Hardship to offender on first offence not special reasons—Road Traffic Act 1930, s 15(2). **Whittall v Kirby** [1946] 2 552, KBD.

Special road—

Failure by prosecution to prove notices and regulations—

Discretion of magistrates to grant adjournment—Road Traffic Act 1960, 9 Eliz s 20(5), s 37(5)—Special Roads (Notice of Opening) Regulations 1962, (S.I. 1962 No 1320), reg 1. **Royal v Prescott-Clarke** [1966] 2 366, QBD.

Special types of vehicle. *See* Motor vehicle—Special type, *ante*.

Specimen—

Breath test. *See* Breath test, *ante*.

Driving while unfit through drink or drugs—

Blood or urine. *See* Driving while unfit to drive through drink or drugs—Specimen of blood or urine, *ante*.

Failure to provide specimen—

Breath test. *See* Breath test—Failure to provide specimen, *ante*.

Specimen for laboratory test to determine driver's blood-alcohol proportion—

Blood—

Division of specimen into parts—Analysis by ordinary equipment and ordinary skill—Analysis by gas chromatography. **Smith v Cole** [1971] 1 200, QBD.

Division of specimen into parts—Onus of proving part sufficient for and capable of analysis—Analysis by ordinary equipment and ordinary skill—Road Traffic Act 1962, s 2(4). **R v Nixon** [1969] 2 688, CA.

Division of specimen into parts—Part must be capable of analysis—Part congealing before analysis—Road Traffic Act 1962, s 2(4). **Earl v Roy** [1969] 2 684, QBD.

Site from which specimen to be taken—Selection of site by doctor—Road Safety Act 1967, s 3(3). **Solesbury v Pugh** [1969] 2 1171, QBD.

Specimen divided into three parts instead of two—Whether proper divisions for purpose of analysis—Specimen offered to driver and accepted by him—Whether he asked for it—Road Traffic Act 1962, s 2(4)(a). **Kidd v Kidd** [1968] 3 226, QBD.

Conditions precedent to request for specimen—

Arrest—Lawful arrest—Necessity of informing driver of reason for arrest—Driver giving specimen of breath sufficient to give positive reading—Driver informed that arrest for failing to provide specimen of breath—Whether arrest lawful—Road Safety Act 1967, s 2(4)(5). **R v Holah** [1973] 1 106, CA.

Arrest—Lawfulness of arrest not material to validity of request for specimen—Road Safety Act 1967, s 3(1). **R v Palfrey** [1970] 2 12, CA.

Arrest—Person who has been arrested under provisions of Road Traffic Acts—Defendant under arrest for theft of car—Defendant not arrested or informed that he was under arrest under Road Traffic Acts—Whether request for specimen validly made—Road Safety Act 1967, s 3(1). **R v Weir** [1972] 3 906, Crown Ct.

Failure to provide specimen. *See* Failure to provide specimen for laboratory test, *ante*.

Hospital patient—

Failure to notify medical practitioner of proposal to warn before patient required to supply specimen—Road Safety Act 1967, s 3(2), (10). **R v Knightley** [1971] 2 1041, CA.

Requirement to provide specimen—Requirement made while motorist a patient at hospital—Motorist subsequently discharging himself—Motorist providing specimen at hospital following discharge—Whether necessary that motorist should be a patient at hospital when specimen provided there—Road Safety Act 1967, s 3(2). **Bourlet v Porter** [1973] 2 800, HL.

Requirement to provide specimen—Warning of effect of failure to comply with requirement—Duty of constable to notify medical practitioner in charge of patient of 'proposal to make the requirement'—Whether constable obliged to notify medical practitioner of intention to warn patient of possible penal consequences of failure to comply with requirement—Road Traffic Act 1972, s 9(2)(7). **Baker v Foulkes** [1975] 3 651, HL.

Right of medical practitioner to object—Continuing right—Road Safety Act 1967, s 3(2). **Bosley v Long** [1970] 3 286, QBD.

- AD TRAFFIC (cont)**
 Specimen for laboratory test to determine driver's blood-alcohol proportion (cont)—
 Hospital patient (cont)—
 Right of medical practitioner to object—Right a condition precedent to requirement to provide specimen—Right to object to provision of specimen not continuing after requirement made—Road Safety Act 1967, s 3(2). *Bourlet v Porter* [1973] 2 800, HL.
 Specimen to be provided at hospital—Road Safety Act 1967, s 3(2). *Bosley v Long* [1970] 3 286, QBD.
 Requirement that person arrested under provisions of statute should provide specimen—
 Lawfulness of arrest—Unlawful arrest of driver following alleged failure to provide specimen for breath test—Subsequent laboratory test showing blood-alcohol proportion above prescribed limit—Whether driver a 'person arrested under' provisions of statute—Whether result of laboratory test admissible for purpose of proving commission of offence—Road Traffic Act 1972, ss 6(1), 9(1). *Spicer v Holt* [1976] 3 71, HL.
 Specimen of blood or urine—
 Two specimens of urine provided by motorist—Specimens considered by police officer to be inadequate—Subsequent request for specimen of blood by police officer—Specimens of urine in fact adequate—Whether permissible for police officer to request specimen of blood when proper specimen already provided—Road Safety Act 1967, s 3(6). *R v Hyams* [1972] 3 651, CA.
 Test relating to proportion of alcohol at time of driving—
 Drink consumed after driving ceased before specimen provided—Evidence as to result of test if adjusted to take account of alcohol consumed after driving ceased—Whether evidence admissible—Road Safety Act 1967, s 1(1). *Rowlands v Hamilton* [1971] 1 1089, HL.
 Drink consumed after driving ceased before specimen provided—Road Safety Act 1967, s 1(1). *R v Durrant* [1969] 3 1357, CA.
 Suspect drinking before administration of breath test—Test subsequently proving positive—Laboratory test positive—Whether offence made out—Road Safety Act 1967, s 1(1). *Director of Public Prosecutions v Carey* [1969] 3 1662, HL.
Speeding. *See* Excessive speed, *ante*.
Stage carriage—
 Fare—
 Intent to avoid payment of fare—Fare from the place whence passenger started—Bus passenger buying a ticket and travelling beyond fare stage for which ticket valid—Whether additional fare an excess fare from the place to which ticket valid or the full fare from the start less the amount paid—Whether dishonest intent necessary—London Passenger Transport Act 1936, s 91(1)(2)(a). *Covington v Wright* [1963] 2 212, QBD.
 Number of standing passengers in excess of prescribed maximum—
 Conductor charged with permitting excess number of passengers to be carried—Whether conductor the wrong person to be charged as a principal offender—Public Service Vehicles and Trolley Vehicles (Carrying Capacity) Regulations 1954 (S.I. 1954 No 1612), reg 3, reg 4. *Spire v Smith* [1956] 2 277, QBD.
 Offence by driver or conductor—
 Endangering safety of passenger by negligence—Conductor—Duty of care of conductor—Injury to passenger through driver not stopping at compulsory stop—Conductor collecting fares on top of car—No negligence on part of conductor—Stage Carriages Act 1832, s 48. *Askew v Bowtell* [1947] 1 883, KBD.
 Offence by driver conductor—
 Injuring property of owner through negligence or by wanton and furious driving—Proof of negligence—Whether necessary to prove in addition 'wanton and furious driving'—Stage Carriages Act 1832, s 48. *Chapman v Kirke* [1948] 2 556, KBD.
Special occasion—
 Conveyance of guests once a week from holiday camp to railway station—Road Traffic Act 1930, s 61(2)—Road Traffic Act 1934, s 25(1). *Victoria Motors (Scarborough) Ltd v Wurzel* [1951] 1 1016, KBD.
 Separate payments by passengers—Owner's ignorance of use to which vehicle put—Road Traffic Act 1930, ss 61, 72(1), (10)—Road Traffic Act 1934, s 25. *Evans v Dell* [1937] 1 349, KBD.
Stolen vehicle—
 Travelling in vehicle known to have been stolen. *See* Taking vehicle without authority—Travelling in vehicle known to have been stolen, *post*.
Stopping of vehicle—
 Failure to give hand signal—
 Stop-light automatically operated by brakes—Accident—Negligence—Failure of defendant to give hand signal—Whether defendant entitled to rely on stop-light—Road Traffic Act 1930, ss 30(1)(h), 45—Motor Vehicles (Direction Indicator and Stop Light) Regulations 1935 (S.R. & O. 1935 No 897). *Croston v Vaughan* [1937] 4 249, CA.
 School crossing. *See* School crossing—Stopping of motor vehicles, *ante*.
 Stopping on motorway. *See* Motorway—Restrictions on stopping, *ante*.
 Supervision of learner driver. *See* Driving licence—Supervision of learner driver, *ante*.
 Suspension of licence—
 Goods vehicle. *See* Goods vehicle—Suspension of licence, *ante*.
 Public service vehicle. *See* Public service vehicle—Suspension of licence, *ante*.
Suspicion of alcohol—
 Breath test. *See* Breath test—Person driving or attempting to drive—Suspicion of alcohol, *ante*.
Taking vehicle without authority—
 Accused not the driver—
 Evidence that occupants of motor vehicle were acting in concert—Sufficiency of evidence—Road Traffic Act 1930, s 28. *Ross v Rivenall* [1959] 2 376, QBD.
 Attempt—
 Sentence—Not to exceed that which may be imposed for full offence. *R v Pearce* [1952] 2 718, CCA.

ROAD TRAFFIC (cont)

Taking vehicle without authority (cont)—

Consent—

Taking and driving away without owner's consent—Consent obtained by false pretence—Whether consent vitiated—Theft Act 1968, s 12(1). **R v Peart** [1970] 2 823, CA.

Driving away—

What amounts to—Releasing handbrake—Vehicle running away on own—Need to establish that accused was in control of steering—Road Traffic Act 1960, s 217(1). **R v Roberts** [1964] 2 541, CCA.

Employer's vehicle—

Driver using employer's van for own purpose—Driver in lawful possession of van before using it for unauthorised purpose—Road Traffic Act 1930, s 28(1). **Mowe v Perraton** [1952] 1 423, QBD.

Driver using employer's van for own purpose—Use outside working hours—Road Traffic Act 1960, s 217. **R v Wibberley** [1965] 3 718, CCA.

Liability of passengers—

Knowledge of theft—Passengers allowing themselves to be carried in vehicle knowing it to have been stolen by driver—Whether passengers guilty of taking and driving away vehicle without consent or authority—Road Traffic Act 1960, s 217(1), (as amended by Road Traffic Act 1962, s 44). **Tolley v Giddings** [1964] 1 201, QBD.

Taking—

Unauthorised assumption of possession coupled with some movement of vehicle—Theft Act 1968, s 12(1). **R v Bogacki** [1973] 2 864, CA.

Taking and driving away—

What amounts to—Causing vehicle to move from where it stands—Motor vehicle pushed a few yards by two defendants, while a third steered—Road Traffic Act 1930, s 28(1). **Shimmell v Fisher** [1951] 2 672, KBD.

Travelling in vehicle known to have been stolen—

Accused not present when vehicle wrongfully taken by another person—Motor cycle—Accused aged 15—Not present when motor cycle wrongfully taken by another boy of same age—Whether riding on cycle, some hours later, as pillion passenger, sufficient to constitute offence—Road Traffic Act 1930, s 28(1). **D (an infant) v Parsons** [1960] 2 493, QBD.

Accused not present when vehicle wrongfully taken by another person—Whether travelling in the vehicle subsequently, knowing it to have been taken without lawful authority, sufficient to constitute offence—Road Traffic Act 1930, s 28(1). **R v Stally** [1959] 3 814, CCA.

Taxi—

Hackney carriage. *See* Hackney carriage, *ante*.

Test certificate—

Day of issue—

Implicit in certificate that condition of vehicle at time of examination remains the same on day of issue—Certificate false in a material particular if condition of vehicle defective at date of issue—Road Traffic Act 1960, ss 65(2), 236. **R v Evans (Stanley)** [1964] 3 666, CCA.

False in material particular—

Back-dated certificate—Car owner found to be without test certificate—Two days later back-dated certificate issued by garage proprietor—Whether certificate false in a material particular—Road Traffic Act 1960, s 236. **Murphy v Griffiths** [1967] 1 424, QBD.

Goods vehicle. *See* Plating and test certificates for goods vehicles, *post*.

Test of competence to drive—

Conduct of test. *See* Driving licence—Test conducted in accordance with regulations, *ante*.

Disqualified driver. *See* Disqualification for holding licence—Test of competence to drive, *ante*.

Time on duty—

Limitation—

Goods vehicle driver. *See* Goods vehicle—Limitation of driver's time on duty, *ante*.

Tower wagon—

Exemption from requirement of plating and test certificates. *See* Plating and test certificates for goods vehicles—Exemption—Tower wagon, *ante*.

Trade licence—

General trade licence—

Break-down van used by repairer and dealer for towing for hire—Road for Vehicles (Registration and Licensing) Regulations 1949 (S I 1949 No 1618), reg 29, art D(1). **Carry v Heath** [1951] 2 774, KBD.

Lorry used by dealers in new and second-hand motor cars and motor car repairers in connexion with building operations at their garage—Road Vehicles (Registration and Licensing) Regulations 1955 (S I 1955 No 1664), reg 29, art D(1). **James v Evans Motors (County Garages) Ltd** [1963] 1 7, QBD.

Motor ambulance—Used for towing trailer laden with motor-boat—Whether vehicle used for unauthorised purpose—Roads Act 1920, s 12—Road Vehicles (Registration and Licensing) Regulations 1924 (S R & O 1924 1462), reg 29D. **Dark v Western Motor & Carriage Co (Bristol) Ltd** [1939] 1 143, KBD.

Motor car used for towing caravan—Caravan not a mechanically propelled vehicle—Road Vehicles (Registration and Licensing) Regulations 1949 (S I 1949 No 1618), reg 29, art D(4). **Jelliff v Harrington** [1951] 1 384, KBD.

ROAD TRAFFIC (cont)

Trade licence (cont)—

Limited trade licence—

Tractor towing loaded trailer—Road Vehicles (Registration and Licensing) Regulations 1941 (S R & O 1941 No 1149), reg 30, art B(1), provisos (b), (i). **Carrimore Six Wheelers Ltd v Arnold** [1949] 2 416, KBD.

Misuse of general trade licence—

Proceedings—Power of county council to institute proceedings in respect of offence committed in their county—Licence issued by another county council—Vehicles (Excise) Act 1949, s 8—Road Vehicles (Registration and Licensing) Regulations 1953 (S I 1953 No 231), reg 35. **R v Reigate Justices, ex parte Holland** [1956] 2 289, QBD.

Motor trader—

Recovery vehicle—Use of recovery vehicle on a public road by virtue of a trade licence—Vehicle equipped for raising but not for drawing disabled vehicle—Whether a 'recovery vehicle'—Vehicles (Excise) Act 1971, s 16(8)—Road Vehicles (Registration and Licensing) Regulations 1971 (S I 1971 No 450), reg 35(3). **E Pearson & Son (Teeside) Ltd v Richardson** [1972] 3 277, QBD.

Traffic lights—

Collision—

Contributory negligence. *See Negligence* (Contributory negligence—Collision between vehicles on road—Traffic lights).

Duty of driver to take care. *See Negligence* (Duty to take care—Driver of motor vehicle—Traffic lights).

Negligence—

Vehicles. *See Negligence* (Vehicles—Traffic lights).

Traffic sign—

Dual carriageway—

Use—Obstruction. *See Highway* (Obstruction—Dual carriageway—Intersections—Highway authority extending central reservation so as to block intersections of carriageway with road joining it—Erection by highway authority of 'dual carriageway' sign at junction).

Failure to conform to traffic sign—

Mens rea—Automatism—Whether mens rea an element of the offence of failing to conform to a traffic sign—Road Traffic Act 1930, s 49(b). **Hill v Baxter** [1958] 1 193, QBD.

Halt at major road ahead—

Compliance—Whether essential to come to a standstill. **Tolhurst v Webster** [1936] 3 1020, KBD.

Part of sign only seen by motorist—Obedience to order as seen—Failure to comply with whole order. **Brooks v Jefferies** [1936] 3 232, KBD.

Light signals—

Fire engine—Disobedience to traffic lights—Traffic Signs (Size, Colour and Type) Provisional Regulations 1933, reg 28. **Ward v London County Council** [1938] 2 341, KBD.

Stop line at road junction—Vehicle crossing stop line when traffic light green stopped when half of vehicle had crossed stop line—Waited for traffic to cross in front of it—Moved forward across road when light signal had changed to red—Only rear half of vehicle crossed stop line when traffic light was red—Whether contravention of Traffic Signs Regulations and General Directions 1964, reg 34(1)(a)—Road Traffic Act 1960, s 14, as amended by Road Traffic Act 1962, s 8 and Sch 1, Pt 2, para 13. **Ryan v Smith** [1967] 1 611, QBD.

Vehicles approaching light-controlled crossing—Speed of approach—Disobedience to traffic lights—Highway Code—Road Traffic Act 1930, s 45(4). **Joseph Eva Ltd v Reeves** [1938] 2 115, CA.

Parking—

London—Restricted street—No yellow line on road to indicate that street was restricted—Car parked in restricted street during prescribed hours—Whether offence committed—Parking Zones (Waiting and Loading Restriction) Order 1966, arts 3(1), 5(1)—London Government Act 1963, s 9—Road Traffic Act 1960, ss 34, 51(3), 52(1), (2)—Traffic Signs Regulations and General Directions 1964 (S I 1964 No 1857) directions 6, 26, as amended by Traffic Signs General Directions 1966 (S I 1966 No 489). **Cooper v Hall** [1968] 1 185, QBD.

Unilateral waiting—Parking prohibited on east side of road from 9 0 a m on Monday falling on odd day in month—Appellant parking car on east side of road at 6 0 a m on such Monday—Car remaining until after 9 0 a m—No traffic signs erected in road to indicate that the prohibition depended on whether Monday fell on odd day in month—Whether offence committed—Traffic Regulation Orders (Procedure) (England and Wales) Regulations 1961 (S I 1961 No 485), reg 15(c)—Brighton Corporation (Various Roads) (No 3) (Unilateral Waiting) Order 1965. **James v Cavey** [1967] 1 1048, QBD.

Portable sign—

Regulation of movement of traffic—Sign put up by road traffic officer requiring traffic to stop—Validity of authorisation by Minister of Transport—Road Traffic Act 1930, ss 48, 49. **Langley Cartage Co Ltd v Jenks, Adams v Same** [1937] 2 525, KBD.

Road markings—

Cause of action for contravention of regulation—Vehicle parked in contravention of regulation having causative effect on accident—No negligence at common law—Traffic Signs Regulations and General Directions 1964 (S I 1964 No 1857), reg 23(2)(a). **Kelly v W R N Contracting Ltd (Burke, Third Party)** [1968] 1 369, Assizes.

Siting—

Duty of Ministry. *See Highway* (Traffic sign—Siting—Duty of Ministry).

Slow—

Duty of driver—Duty to reduce speed so that he can pull up quickly should other vehicle approach. **Buffel v Cardox (Gt Britain) Ltd** [1950] 2 878, CA.

White line on road—

Driving on wrong side of line—Whether white line a traffic sign—Whether driver 'failing to conform to an indication given by a traffic sign'—Road Traffic Act 1930, ss 48(9), 49. **Evans v Cross** [1938] 1 751, KBD.

ROAD TRAFFIC (cont)

Traffic signal—

Duty to take care. *See Negligence* (Duty to take care—Traffic signal).

Trailer—

Anything on four wheels drawn by vehicle—

Poultry shed drawn on road by tractor—'Land Implement'—Road Traffic Act 1930, s 1—Motor Vehicles (Construction and Use) Regulations 1947, reg 3(1). *Garner v Burr* [1950] 2 683, KBD.

Efficient working order—

Vehicle and trailer. *See* Motor vehicle—Efficient working order—Trailer, *ante*.

Indivisible load of exceptional length—

Distribution of load dangerous to persons on trailer or highway—Trailer constructed and normally used for conveyance of exceptional length—Not exempt where distribution of load dangerous—Motor Vehicles (Construction and Use) Regulations 1931 (S R & O 1931 No 4), regs 62, 85. *Cripps v Cooper* [1936] 2 48, KBD.

Land implement—

Scraper—Scraper used for civil engineering work in levelling land, excavating and removing earth—Whether scraper a land implement—Motor Vehicles (Construction and Use) Regulations 1966 (S I 1966 No 1288), reg 3. *Markham v Stacey* [1968] 3 758, QBD.

Two wheeled trailer—Trailer comprising hopper mounted on chassis designed to distribute lime, slag, salt, fertilisers, etc, on agricultural land—Mechanism operated by means of power derived from towing tractor through power shaft drive—Whether 'land implement'—Motor Vehicles (Construction and Use) Regulations 1955 (S I 1955 No 482), reg 3(1). *Amalgamated Roadstone Corp Ltd v Bond* [1936] 1 682, QBD.

Person in attendance—

Exemption—Closed trailer constructed and used for carrying meat—Trailer carrying tiles—Trailer constructed and generally used for carrying meat—Whether exempt—Road Traffic Act 1930, s 17—Motor Vehicles (Construction and Use) Regulations 1931, reg 77. *Union Cartage Co Ltd v Heamon, Eggleton v Same* [1937] 1 538, KBD.

Exemption—Trailer with not more than two wheels—Towing of four-wheeled vehicle—Two wheels only on road—Whether exempt as a two wheel trailer—Road Traffic Act 1930, s 17(1)—Motor Vehicles (Construction and Use) Regulations 1947 (S R & O 1947 No 670), reg 85(iii). *Carey v Heath* [1951] 2 774, KBD.

Special type of vehicle—

Two trailers carrying abnormal indivisible load. *See* Motor vehicle—Special type, *ante*.

Superimposed on towing vehicle. *See* Articulated vehicle—Trailer superimposed on towing vehicle, *ante*.

Tramcar—

Stage carriage. *See* Stage carriage, *ante*.

Transport—

Value added tax—

Zero-rating. *See* Value added tax (Zero-rating—Transport of passengers).

Travel concessions—

Local authority. *See* Local authority (Transport—Travel concessions).

Travelling in vehicle known to have been stolen. *See* Taking vehicle without authority—Travelling in vehicle known to have been stolen, *ante*.

Tyres—

Defective tyre—

Separate offences—Single user on road with two defective tyres—Whether separate information required in respect of each wheel used with defective tyre—Road Traffic Act 1960, s 64—Motor Vehicles (Construction and Use) Regulations 1969 (S I 1969 No 321), reg 83(1)(a), (f), (4). *Saines v Woodhouse* [1970] 2 388, QBD.

Unfitness to drive—

In charge of vehicle. *See* Being in charge of vehicle when unfit to drive through drink or drugs, *ante*.

Unladen weight—

Motor vehicle. *See* Motor vehicle—Unladen weight, *ante*.

Unlicensed vehicle. *See* Excise licence—Unlicensed vehicle, *ante*.

Unlighted vehicle on highway—

Negligence. *See* Negligence (Highway—Unlighted vehicle).

Urine—

Specimen—

Driving While unfit through drink or drugs. *See* Driving while unfit to drive through drink or drugs—Specimen of blood or urine, *ante*.

Specimen for laboratory test—

Determination of driver's blood-alcohol proportion. *See* Specimen for laboratory test to determine driver's blood-alcohol proportion—Specimen of blood or urine, *ante*.

Using vehicle on road in breach of regulations. *See* Motor vehicle—Using vehicle on road in breach of regulations, *ante*.

Using vehicle or causing or permitting vehicle to be used on road without policy being in force. *See* Motor insurance (Using vehicle or causing or permitting vehicle to be used on road without policy being in force).

Vehicle—

Motor vehicle. *See* Motor vehicle, *ante*.

Vehicle test—

Authorised examiner—

Withdrawal of authorisation—Discretion of Minister of Transport—Motor Vehicles (Tests) Regulations 1968 (SI 1968 No 1714), reg 26(3), Sch 3, para 2. *R v Minister of Transport, Ex parte Males* [1970] 3 434, QBD.

Test certificate. *See* Test certificate, *ante*.

AD TRAFFIC (cont)**Waiting and loading restrictions—****London—**

Prohibition of waiting longer than necessary to enable any person to board or alight—
Accused getting out of car and taking parcel into nearby flat—Whether 'alighting' while
taking parcel into flat—London Parking Zones (Waiting and Loading) (Restriction)
Regulations 1960 (S I 1960 No 594), reg 4(a). *Clifford-Turner v Waterman* [1961] 3 974,
QBD.

Taxi—Driver left taxi unattended in prohibited street to deliver parcel at house in street—
Vehicles on hire for purpose of delivering unaccompanied parcel—Whether hackney
carriage a goods vehicle—Contravention of art 5(1), (2) of Order of 1966—Whether ultra
vires—Parking Zones (Waiting and Loading Restriction) Order 1966, art 3(1), art 5(1), (2) and
art 9(3)—London Hackney Carriage Act 1853, s 7—London Government Act 1963, s 10(1).
Levinson v Powell [1967] 3 796, QBD.

Waiting prohibited subject to exemption for loading and unloading—

Respondent delivering goods—Goods offloaded and left at entrance to premises and van
driven to another prohibited street by respondent—Whether van being unloaded in second
street—County of Dorset (Various Roads, Swanage) (Prohibition and Restriction of Waiting)
Order 1967. *Pratt v Hayward* [1969] 3 1094, QBD.

Weight—**Heavy motor car—**

Weight transmitted to road surface. *See* Heavy motor car—Weight transmitted to road
surface, *ante*.

Unladen weight of vehicle. *See* Motor vehicle—Unladen weight, *ante*.

Zebra crossing. *See* Pedestrian crossing—Zebra crossing, *ante*.

ROADS AND SEWERS**Covenant—**

Upkeep of common roads and sewers. *See* Sale of land (Covenant running with land—Burden
of covenant).

ROADWORTHINESS**Motor insurance policy—**

Condition. *See* Motor insurance (Conditions—Roadworthiness).

ROBBERY

See Criminal law (Robbery).

ROOF**Building regulations—****Working place—**

Place on which workman required to work for appreciable period of time. *See* Building
(Working place—Meaning of working place—Place on which workman required to work for
appreciable period of time—Work on flat roof for period of ten to 15 minutes).

ROOF WORK

Building regulations. *See* Building (Roof work).

ROULETTE

Lawfulness. *See* Gaming (Lawful and unlawful gaming—Roulette).

ROYAL ARMS**Display in church to signify royal supremacy—****Faculty—**

Jurisdiction. *See* Ecclesiastical law (Faculty—Jurisdiction—Royal arms—Display in church
to signify royal supremacy).

ROYAL COLLEGE OF SURGEONS**Gift to—**

Charitable object. *See* Charity (Benefit to community—Surgery—Promotion of surgery—
Incidental benefits to individuals—Gift to Royal College of Surgeons).

ROYAL FORCES**Court-martial. *See* Court-martial.****Property of member of—****Exemption from estate duty—**

Death on war service. *See* Estate duty (Exemption—Death on war service).

ROYAL PALACE**Nigeria—**

Title to. *See* Nigeria (Title to property—Royal palace at Lagos).

ROYAL PREROGATIVE**Generally. *See* Crown (Prerogative).**

Right to legislate in colonies. *See* Malta (Right to legislate in colonies).

ROYALTIES**Deduction of tax—****Acceptance of deduction under mistake of law—**

Accord and satisfaction. *See* Accord and satisfaction (Royalties—Deduction of tax).

Deduction of tax. *See* Income tax (Annual payment—Payment out of profits etc already taxed—

Inference that payment net of tax—Royalties).

ROYALTIES (cont)Income tax. *See* **Income tax** (Royalties).Patent. *See* **Patent** (Royalties).**RUBBISH**

Accumulation or deposit—

Statutory nuisance. *See* **Nuisance** (Statutory nuisance—Accumulation or deposit prejudicial to health or a nuisance).**RULE AGAINST PERPETUITIES**Accumulation of income. *See* **Accumulation** (Excessive period).

Alternative disposition—

Primary trust for non-charitable purpose—

Gift over on refusal of bequest—Gift over to charity—Gift over on future uncertain event void.

Re Spensley's Will Trust [1954] 1 178, CA.

Two distinct events—

Whichever shall last happen—Gift to take effect on death of last surviving child or widow or widower of children whichever shall last happen—Whether adequate expression of alternative events. **Re Curryer's Will Trusts** [1938] 3 574, ChD.

Alternative independent limitation—

Failure of prior limitation—

Will—Residue given on trust for sale—Settled share—Discretionary trust for any widow donee may leave—Void limitation—Effect upon subsequent limitation—Alternative independent limitation. **Re Coleman's Will Trusts** [1936] 2 225, ChD.

Application of rule—

Objects of trust capable of taking outside perpetuity period—

Gift for education of children of named families—Children to be 'the lawful descendants' of three named individuals—Money to be invested by trustees 'under a trust for ever to be called' after testatrix and her mother—Trust void for perpetuity. **Re Compton (No 2)** [1946] 1 117, ChD.Will—power to distribute residue—Discretion of trustees—Among such of the descendants of testator's brothers and sisters in such shares and at such proper times as the trustees should determine. **Re Symm's Will Trusts** [1936] 3 236, ChD.

Charitable gift—

Dependent on future uncertain event—

Trustees directed to retain fund until such time as a candidate for the priesthood comes forward from a certain church. **Re Mander (decd)** [1950] 2 191, ChD.

Gift over for non-charitable purposes—

Gift to named charities—On amalgamation gift over for purposes of charity or benevolence—Gift over void. **Re Bawden's Settlement** [1953] 2 1235, ChD.

Gift over from one charity to another—

Second charity incorporated by royal charter. **Royal College of Surgeons of England v National Provincial Bank Ltd** [1952] 1 984, HL.

Validation where gift partly non-charitable—

Purposes partly charitable and partly non-charitable—Power of selection amongst orders of nuns which were charitable and orders of nuns which were not charitable—No express indication of alternative purposes—Conveyancing Act 1919—1954 (New South Wales), s 37D. **Leahy v Attorney-General of New South Wales** [1959] 2 300, PC.

Children—

Presumption that woman past age of child-bearing—

Presumption inapplicable for purpose of rule against perpetuities. **Inland Revenue Comrs v Bernstein** [1960] 1 697, ChD.

Conditional gift—

Specified event to happen during life in being—

Gift to son—Gift taking effect when the present 'war with Germany shall terminate' and 'peace be declared'—Gift to take effect during lifetime of son. **Re Grotian (decd)** [1955] 1 788, ChD.

Distribution—

Life in being—

Date of distribution—Not date when distribution first possible, but date when distribution actually effected. **Re Luck** [1940] 3 307, CA.

Express limitation by reference to rule—

Discretionary trust for children and grandchildren—

Within the limitations prescribed by law—Validity. **Re Vaux** [1938] 4 297, CA.

Gift over after uncertain period—

Duration of war—

Gift over taking effect 'after the termination of the present war'—Validity. **Re Engels** [1943] 1 506, ChD.

Fulfillment of condition—

Gift rendering capital inalienable—Gift of income to non-charitable association 'until vivisection shall be made a punishable offence'—Gift over to Royal Society for Prevention of Cruelty to Animals—Validity of gift and gift over—Contingency. **Re Wightwick's Will Trusts** [1950] 1 689, ChD.

Impossibility of infringing rule—

Age of lawful marriage—

Gift to the grandchildren of named person living at testatrix's death or born within five years therefrom and attaining 21—Impossibility of child of named person being born after death of testatrix lawfully marrying and having children within five years of death. **Re Gaité's Will Trusts** [1949] 1 459, ChD.

Lives in being—

Choice of lives in being—

Difficulty of ascertainment—Descendants of Queen Victoria—Validity. **Re Leverhulme (No 2)** [1943] 2 274, ChD.

LE AGAINST PERPETUITIES (cont)

Lives in being (cont)—

Trustees—

Objects of trust not limited to lives in being—Single indivisible trust—Original trustees and trustees for time being—Trust fund distributable 'at such time or times' as the trustees think fit—Trustees defined as 'the first trustees and...the trustees or trustee for the time being'—Trust not capable of being construed as two distinct trusts, one to original trustees and one to trustees for time being. *Innes (Inspector of Taxes) v Harrison* [1954] 1 884, ChD.

Pension scheme—

Register of pensionable employees—

Entries on register annually—Powers of committee to apply moneys on failure of employees to qualify for pension—Power to determine scheme—Whether powers void for perpetuity—Application of Perpetuities and Accumulations Act 1964, ss 3 and 15. *Re Thomas Meadows & Co Ltd and Subsidiary Companies* (1960) Staff Pension Scheme Rules [1971] 1 239, ChD.

Possibility of gift vesting outside perpetuity period—

Delay in vesting involving breach of trust—

Trust for sale—Vesting of gift on completion of sale—Devise in will of life interest in real property—Trust to sell farm on death of life tenant—Proceeds of sale to be divided among class of beneficiaries living at date of completion of sale—No express or implied power to postpone sale—Duty of trustees to sell property within year of life tenant's death—Possibility that trustees might delay completing sale for more than 21 years—Whether possibility to be taken into account. *Re Atkin's Will Trusts* [1974] 2 1, ChD.

Power—

Discretion to select beneficiaries. *See Trust and trustee* (Discretionary trust—Uncertainty—Power of selection).

Power of advancement—

Effect of rule on power—

Fiduciary power under former settlement being exercised. *Pilkington v Inland Revenue Comrs* [1962] 3 622, HL.

Power arising under will—

Time as at which application of rule to be considered. *Pilkington v Inland Revenue Comrs* [1962] 3 622, HL.

Power extending to 'vested' share—

Construction—Power exercisable in anticipation of absolute vesting not in defeasance—Power admittedly invalid for remoteness in relation to some interests—Whether power void. *Re Wills' Will Trusts* [1958] 2 472, ChD.

Power of appointment—

Appointment on trust to pay income during their joint lives to two grandchildren in equal shares as tenants in common—

After death of either grandchild to pay whole income to survivor—Neither grandchild alive at date of deed conferring power of appointment—Reversionary interest of survivor contingent and therefore void. *Re Legh's Resettlement Trusts* [1937] 3 823, CA.

Direction to apply capital if income falls below certain sum—

Contingent interest—Gift over to other appointees if share of appointee fails to vest absolutely in her child on her death—Appointees not born at date of settlement. *Re Johnson's Settlement Trusts* [1943] 2 499, ChD.

Discretion to select beneficiaries—

Single decision—Implication that decision to be reached within reasonable time—Pension provision for managing director of company. *Re Leek (decd)* [1968] 1 793, CA.

Excessive execution. *See Power of appointment* (Excessive execution—Appointment of absolute interest with gift over—Gift over infringing perpetuity rule).

Exercise. *See Power of appointment* (Exercise—Special power—Appointment of—ending rule against perpetuities).

Exercise of power of advancement—

Creation of special power of appointment—Power of advancement conferred by settlement and exercised by subsequent settlement—Special power of appointment contained in subsequent settlement—Read back into will under which original settlement made—Special power to be exercised 'without transgressing the rule against perpetuities'—Invalidity of exercise of power of advancement and of 1957 settlement. *Re Abrahams' Will Trusts* [1967] 2 1175, ChD.

Joint power—

General or special power—Effect in relation to rule against perpetuities—Settlement conferring joint power of appointment on donees—Second settlement—Donees exercising power of appointment by re-settling property on trusts of second settlement—Period of second settlement exceeding perpetuity period for first settlement—Whether limitations of second settlement to be read back into first settlement—Whether donees of power of appointment to be treated as having equivalent of absolute interest in property subject of power. *Re Earl of Coventry's Indentures* [1973] 3 1, ChD.

Power of revocation and new appointment—

Possibility of exercise beyond period. *Re Watson's Settlement Trusts* [1959] 2 676, ChD.

Reference to rule—

Meaning—

Reference to 'rule against perpetuities' in instrument—Reference to be taken as a reference to the true rule in absence of a sufficient expression to the contrary. *Inland Revenue Comrs v Williams* [1969] 3 614, ChD.

RULE AGAINST PERPETUITIES (cont)

Remoteness—

Limitation by reference to statutes of distribution—

Gift over on failure of trusts—Limitation by reference to 'the statutes for the distribution of' personal estate of intestates—Possibility of existence of persons having contingent interests at longest time allowed by rule against perpetuities—Persons under 21 or not having married—Administration of Estates Act 1925, s 47(1). **Re Hart's Will Trusts** [1949] 2 898, ChD.

Rentcharge—

Amount of charge ascertainable by reference to gross rateable value from time to time—Charge immediately vesting on creation—Whether validly created. **Beachway Management Ltd v Wisewell** [1971] 1 1, ChD.

Scheme for administration of fund for benefit of employees of company—

Uncertainty in description of persons to benefit—Whether validated by Superannuation and Other Trust Funds (Validation) Act 1927, ss 1, 2. **Re Flavel's Will Trusts** [1969] 2 232, ChD.

Rule prohibiting limitations to issue of unborn persons—

Abolition of rule by statute—

Marriage settlement dated before coming into force of statute—Power of appointment under marriage settlement exercised by deed after coming into force—Application of rule—Law of Property Act 1925, s 161(2). **Re Leigh's Marriage Settlement** [1952] 2 57, ChD.

Settlement—

Dependent limitations—

Clause in will contained two distinct provisions—First provision dependent on exhaustion of objects of preceding trust—Preceding trust infringed rule against perpetuities—First provision of clause also thereby invalidated—Second provision of clause not dependent on exhaustion of objects of prior trust—Second provision did not fail for perpetuity. **Re Hubbard's Will Trusts** [1962] 2 917, ChD.

Limitation dependent on void limitation—195020292

Limitation dependent on void limitation—Accord with previous valid limitations—Dependent limitation void. **Re Mill's Declaration of Trust** [1950] 2 292, CA.

Residue of testator's estate given on first for sale—Settled shares—Discretionary trusts during life of any widow of named person—Void limitation—Effect on subsequent gifts of capital. **Re Allan's Will Trusts** [1958] 1 401, ChD.

Successive interests each taking effect on termination of antecedent interests—If one interest void for perpetuity ulterior interests void—Whether provision in event of 'failure of trusts hereinbefore declared' covered nullity for infringing rule against perpetuities. **Re Buckton's Declaration of Trust** [1964] 2 487, ChD.

Gift to children—

Provisions for substitution and cross-remainders—Income of trust fund to be paid to settlor's children from death of settlor's widow to death of last surviving child with provisions for substitution and cross-remainders—Provisions for substitution and cross-remainders to be read as separation directions—Settlor's children born before date of settlement—No breach of rule against perpetuities. **Re Hey's Settlement Trusts and Will Trusts** [1945] 1 618, ChD.

Limitation to a class—

Introduction of new members into original class of takers—Gift to children who should attain 25—Proviso that, if any son should die under the age of 25 leaving any children who should attain 21, such children should take the share to which the parent would have been entitled, had he attained 25. **Re Hooper's Settlement Trusts** [1948] 2 261, ChD.

Introduction of new members into original class of takers—Gift to composite class of children and grandchildren who should attain 21. **Re Lord's Settlement** [1947] 2 685, ChD.

Provision for taking by substitution—

Gift of income of trust fund to children of settlor on youngest child attaining 21—Vesting of interest on each child's attaining 21—Proviso that, if any child should die before 'attaining a vested interest' leaving any children who should attain 21, such children should take parents' share 'by substitution'—Introduction of new members into original class of takers—Words 'by substitution' not having genuine substitutionary effect—Gift invalid. **Re Lord's Settlement** [1947] 2 685, ChD.

Statutory perpetuity period—

Instrument taking effect after commencement of Act—

Variation of trusts—Arrangement approved by court under Variation of Trusts Act—Arrangement approved after commencement of Act—Trust established before commencement—Whether arrangement coupled with court's order constituting an 'instrument'—Variation of Trusts Act 1958, s 1—Perpetuities and Accumulations Act 1964, s 15(5). **Re Holt's Settlement** [1968] 1 470, ChD.

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Executor's year—Residuary bequest—Direction to realise and divide residue of estate—Legatee to be existing at time of realisation of residuary estate—No express power to postpone realisation—Whether gift referred to end of executor's year—Validity. **Re Petrie (decd)** [1961] 3 1067, CA.

Unincorporated association—

Gift to association—

Absolute gift to members or trust for association as continuing body—Bequest in will—Whether bequest valid as absolute gift to existing members or invalid as an endowment tending to perpetuity. **Leahy v Attorney-General of New South Wales** [1959] 2 300, PC.

Vendor and purchaser—

Option to purchase land—

No time limit for exercise—Specific performance against original grantee of option—Foundation of jurisdiction to grant decree. **Hutton v Watling** [1948] 1 803, CA.

WILLS AGAINST PERPETUITIES (cont)

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Forfeiture clause—

Interests of children or grandchildren—Forfeiture in event of child or grandchild forsaking

Jewish faith or marrying outside faith—Event to be proved to the satisfaction of trustees—

Forfeiture clause void. *Re Spitzel's Will Trusts* [1939] 2 266, ChD.**WILLS IN SHELLEY'S CASE**

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Will. *See* Will (Heirlooms—Descent—Rule in Shelley v Shelley).**WILLS**Immigration. *See* Immigration (Rules).Trade union. *See* Trade union (Rules).Unincorporated association. *See* Unincorporated association (Rules).**WILLS OF COURT**Alteration. *See* Statutory instrument (Rules of court—Alteration).Power of Rules Committee. *See* Statutory instrument (Rules of court—Power of Rules Committee—

Power to make rule relating to production of documents and Crown privilege).

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Safe means of access to workplace. *See* Dock (Repair of ship in dry dock—Statutory duty to provide safe means of access to workplace).

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Dangerous employment—

Duty of master—

Duty to ensure that danger is minimised. *Naismith v London Film Productions Ltd* [1939] 1 794, CA.

Employment only possible at some risk to health of servant—

Servant wishing to engage or continue in employment—No duty on master to refuse to employ or to dismiss servant. *Withers v Perry Chain Co Ltd* [1961] 3 676, CA.

Dangerous machinery—

Child—

Child of ten invited to help with threshing—Injury by dangerous machine—Allurement. *Holdman v Hamlyn* [1943] 2 137, CA.

Circular saw—

Duty to instruct and supervise—Apprentice on farm aged 18n experience of circular saws—Misrepresentation as to experience—Consequent lack of supervision—Negligent operation of saw—Injury. *Kerry v Carter* [1969] 3 723, CA.

Common law duty—

Exemption from particular fencing provision of regulations—Whether common law duty to require workman to work cutters of horizontal milling machine with guard provided or provide alternative guard. *Quinn v Horsfall & Bickham Ltd* [1956] 2 467, CA.

Oiling of machinery—

Factory containing many machines of which a few were dangerous to oil when in motion—Whether employers owed duty to give instructions not to oil dangerous machines when in motion. *Lewis v High Duty Alloys Ltd* [1957] 1 740, Assizes.

Young person under 18—

Exposure to risk of injury—Machine with moving part—Bacon slicing machine—No locking device on cutting blade—Young person injured while cleaning cutting blade in different manner to that instructed—Defence of due diligence—Offices, Shops and Railway Premises Act 1963, ss 18(1), 67. *J H Dewhurst Ltd v Coventry Corp* [1969] 3 1225, QBD.

SAFE SYSTEM OF WORKING (cont)

Delegation of duty to servant—

Precautions—

Duty to instruct workmen—Whether the devising of precautions should be left to workmen or whether employer should instruct workmen. **Gibb v United Steel Cos Ltd** [1957] 2 113, Assizes.

Servant's attention drawn to statutory regulations—

Contributory negligence—Electricity (Factories Act) Special Regulations 1908, (S R & O 1908 No 1312) reg 18(d) (as amended by Electricity (Factories Act) Special Regulations 1944, (S R & O 1944 No 739)). **Barcock v Brighton Corpn** [1949] 1 251, KBD.

Duty to give information or advice—

Protective appliance—

Availability of protective clothing—Foundry—Injury to experienced moulder. **Qualcast (Wolverhampton) Ltd v Haynes** [1959] 2 38, HL.

Availability of protective clothing—Notice advising workman of availability and advising him to wear it—Workman unable to read, but master unaware of this—Foundry—Injury from molten metal—Probability that protective clothing would not have been used. **James v Hepworth & Grandage Ltd** [1967] 2 829, CA.

Conflicting medical opinions whether appliance would be effective protection—Barrier cream not provided by employer—Burden of proof of failure to take reasonable care. **Brown v Rolls Royce Ltd** [1960] 1 577, HL.

Duty to provide masks and to persuade workmen to wear them—Risk of silicosis in steel foundry—Measure of damages. **Crookall v Vickers-Armstrong Ltd** [1955] 2 12, Assizes.

Notice of precautionary measures posted up—Instructions given to workman—Protective cream and washing facilities provided—Workman's failure to take precautions unknown to employer. **Woods v Durable Suites Ltd** [1953] 2 391, CA.

Protective cream kept in store but not in workshop—No insistence by foreman on its use. **Clifford v Charles H Challen & Son Ltd** [1951] 1 72, CA.

Protection of eyes—Grinding machine—Goggles in office 30 feet away—No notice on machine that goggles should be used—Men left to ask for goggles if they wanted them. **Finch v Telegraph Construction and Maintenance Co Ltd** [1949] 1 452, KBD.

Protection of eyes—Grinding machine—Goggles not provided—Probability that toolsetter would not have used goggles, if provided, unless compelled to do so—Duty not only to provide safety appliances but also to ensure their use by means of orders and supervision. **Nolan v Dental Manufacturing Co Ltd** [1958] 2 449, Assizes.

Protection of eyes—Special risk of injury—One-eyed workman—Need to provide goggles—Injury to other eye. **Paris v Stepney Borough Council** [1951] 1 42, HL.

Warning—

Duty of master to warn servant of danger—Extent—Overhead travelling cable-way low above roof to which servant had access and might be expected to go. **Quintas v National Smelting Co Ltd** [1961] 1 630, CA.

When duty arises—

Omission to give instructions—Defect in system or breach of duty to take reasonable steps for safety of employees. **Winter v Cardiff Rural District Council** [1950] 1 819, HL.

Mine—

Support of roof. *See* **Mine** (Support—Support of roof—Duty of master to servant to provide safe system of work).

Permitting unsafe system to be in operation—

Burden of proof—

Alternative system—Whether workman required to plead and prove alternative system of work which would have been safe. **Dixon v Cementation Co Ltd** [1960] 3 417, CA.

Plant—

Provision of proper plant and appliances—

Staging in wet dock. **Lovell v Blundells and T Albert Crompton & Co Ltd** [1944] 2 53, KBD.

Safety of plant—

Onus of proof—Railway wagon in dangerous condition—Knowledge of state of wagon—Contributory negligence. **McDonald v British Transport Commission** [1955] 3 789, Assizes.

Pleading—

Whether plaintiff need plead a particular system which would be safe. *See* **Statement of Claim** (Personal injuries action—Allegation of failure to provide safe system of working).

Reasonable care not to expose employee to unnecessary risk—

Acts of independent contractors—

Modernisation of store premises—Business of store continuing during modernisation—Responsibility of employers, owners and occupiers of store, for negligence of contractors, engineers or architects in carrying out or supervising such modernisation—Fire—Death of employee due to fire—Alleged fault in electrical cable—Whether employers liable for any negligence of cable manufacturers. **Sumner v William Henderson & Sons Ltd** [1963] 1 408, QBD.

Cleaning floor made slippery by escape of viscous fluid before work began—

Escape of fluid due to negligence of servant of master—Fluid not dangerous in itself—Plaintiff employee instructed to clear up mess and supplied with necessary equipment but not given detailed instructions—Floor occupied by pallets standing on short legs and used as platforms for heavy bags of pipeclay stored on them—Plaintiff injured through slipping on floor—Liability of master. **Vinney v Star Paper Mills Ltd** [1965] 1 175, Assizes.

SAFE SYSTEM OF WORKING (cont)

Reasonable care not to expose employee to unnecessary risk (cont)—

Expert advice—

Reliance by employer on expert advice as to safety—Mining—Support for roof—Advice of mine owner followed by tunnelling contractor—Accident to contractor's employee due to fall of stone from roof of mine—Insufficient support to roof—Whether contractor liable to employee. **Szumczyk v Associated Tunnelling Co Ltd** [1956] 1 126, Assizes.

Extent of master's duty—

Defence—Good practice of trade followed—Whether conclusive that there was no evidence of negligence to go to jury. **Cavanagh v Ulster Weaving Co Ltd** [1959] 2 745, HL.

Employee at place where it was not his duty to go after work had ceased. **Brophy v J C Bradfield & Co Ltd** [1955] 3 286, CA.

Reasonable care not absolute duty—Following advice of expert. **Szumczyk v Associated Tunnelling Co Ltd** [1956] 1 126, Assizes.

System to be modified to meet circumstances of particular job—Unloading of cargo—Change over from discharging by means of a derrick to hauling up by straight lift—Breaking of rope. **Porter v Port of Liverpool Stevedoring Co Ltd** [1944] 2 411, Assizes.

System to be modified to meet circumstances of particular job—Unloading of cargo—Use of married gear. **Speed v Thomas Swift & Co Ltd** [1943] 1 539, CA.

Farming—

Fierce bull owned by master—No order by master to servant not to enter stall—Servant entered stall and injured by bull—Liability of master. **Rands v McNeil** [1954] 3 593, CA.

Fencing of hatches on ship—

Seaman falling down an open hatch in grain ship while at sea—General practice of grain ships not to fence hatches while at sea—Whether danger reasonably foreseeable. **Morris v West Hartlepool Steam Navigation Co Ltd** [1956] 1 385, HL.

Knowledge of risk—

Duty to keep knowledge up to date. **Graham v Co-operative Wholesale Society Ltd** [1957] 1 654, QBD.

Lighting—

Inadequate lighting in wet dock. **Garcia v Harland & Wolff Ltd** [1943] 2 477, KBD.

Scalding water from shower—

Breach of statutory duty—Whether servant should have tested water before entering shower—Merchant Shipping (Crew Accommodation) Regulations 1953 (S 1 1953 No 1036), reg 24(3). **Foulde v Canadian Pacific Steamships Ltd** [1969] 1 283, Assizes.

Servant provided with unmanageable horse—

Injured by horse running away—Volenti non fit injuria—Whether risk incidental to employment. **Bowater v Mayor, Aldermen and Burgesses of the Borough of Rowley Regis** [1944] 1 465, CA.

Slippery duckboard—

Servant injured while washing teacup for her own use—Course of employment—Acts reasonably incidental to daily work. **Paine v Colne Valley Electricity Supply Co Ltd, and British Insulated Cables Ltd** [1938] 4 803, KBD, **Davidson v Handley Page Ltd** [1945] 1 235, CA.

Steps—

Handrail—Set of three steel steps leading to platform—Duty to provide handrail. **Kimpton v Steel Co of Wales Ltd** [1960] 2 274, CA.

Untrained foreign labourer with poor knowledge of English—

Labourer employed to carry molten metal—Iron and Steel Foundries Regulations 1953 (S 1 1953 No 1464), reg 6(2)(a). **Hawkins v Ian Ross (Castings) Ltd** [1970] 1 180, QBD.

Window cleaner—

Best system possible in the circumstances—Defective window sash—No safety appliances provided. **General Cleaning Contractors Ltd v Christmas** [1952] 2 1110, HL.

Instructions—Instructions to be given even if likely to be ignored. **Drummond v British Building Cleaners Ltd** [1954] 3 507, CA.

Practice of trade—Inspection—No practice in trade of inspecting premises for danger—Duty of master. **Wilson v Tyneside Window Cleaning Co** [1958] 2 265, CA.

Safe place of work—

Dry dock—

Re-concreting of wall—Employee working on ledge two feet six inches wide with back to wall—Failure to provide fence. **Bath v British Transport Commission** [1954] 2 542, CA.

Servant employed to paint ship from altar courses—No safety precautions. **Hurley v J Sanders & Co Ltd** [1955] 1 833, Assizes.

Electrical station—

Kiosk housing transformer. **Paine v Colne Valley Electricity Supply Co Ltd and British Insulated Cables Ltd** [1938] 4 803, KBD.

Narrow walkway between rail tracks—

One track belonging to master and another track belonging to British Transport Commission—Servant injured by traffic on British Transport Commission's track. **Braithwaite v South Durham Steel Co Ltd** [1958] 3 161, Assizes.

Occupation of master—

Work on premises not occupied by master. **Cilia v H M James & Sons (Spark, third party)** [1954] 2 9, QBD.

Rainwater on floor of passage leading to canteen—

Workman slipping and suffering injury. **Davies v De Havilland Aircraft Co Ltd** [1950] 2 582, KBD.

Scaffolding—

Workman employed by sub-contractors killed by pipe falling from platform of scaffolding—Scaffolding erected by other sub-contractors—Gaps between boards of platform and no toe boards to platform. **Hughes v McGoff and Vickers Ltd** [1955] 2 291, Assizes.

SAFE SYSTEM OF WORKING (cont)

Safe place of work (cont)—

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Defective staging—Accident to workman employed by sub-contractors engaged for the electric arc welding—Staging provided by contractors—Sub-contractors for specialised work not responsible for staging erected by contractors. **Hodgson v British Arc Welding Co Ltd, and B & N Green & Silley Weir Ltd** [1946] 1 95, KBD.

Well—

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Safety of equipment—

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Trestles and planks—Employee borrowing equipment from contractors—Equipment collapsing owing to latent defect—Whether master guilty of negligence. **Quinn v J W Green (Painters) Ltd** [1965] 3 785, CA.

Delegation of duty—

Selection of equipment—Whether duty sufficiently discharged by relying solely on experienced workman to select equipment—Yard foreman using inadequate shackles for lifting load—Contrast between common law and statutory duties. **Richardson v Stephenson Clarke Ltd** [1969] 3 705, Assizes.

Loading ship—

Rope-sling breaking and contents falling on workman below—Rope changed without knowledge of employers. **O'Melia v Freight Conveyors Ltd and Rederiaktiebolaget Svenska Lloyd** [1940] 4 516, Assizes.

Secondhand machine—

Latent defect—Duty to exercise reasonable care when acquiring machine—Burden of proof. **Pearce v Round Oak Steel Works Ltd** [1969] 3 680, CA.

Tool bought from reputable manufacturers—

Defect in tool due to work done by manufacturers' independent contractors—Previous accident to another servant from same tool of which employers had knowledge—Whether manufacturers were liable to servant. **Taylor v Rover Co Ltd (Richard W Carr & Co Ltd Third Party)** [1966] 2 181, Assizes.

Latent defect—Whether duty to examine tools—Dangerous goods—Negligence—Liability of manufacturers—Tools supplied for use in trade—Burden of proof. **Mason v Williams and Williams Ltd and Thomas Turton & Sons Ltd** [1955] 1 808, Assizes.

Tool bought from reputable supplier who had bought it from reputable manufacturers—

Defect due to negligence in manufacture—Defect not discoverable by employers, but patent to manufacturers. **Davie v New Merton Board Mills Ltd** [1959] 1 346, HL.

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SAFETY

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Offices shops and railway premises—Safety of employees).

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SAFETY NETS

Building operations. *See* **Building** (Building operations—Safety nets, sheets and belts).

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Constructive delivery—Delivery by seller direct to sub-purchaser at request of purchaser—Goods not in accordance with sample—Right of subsequent rejection—Sale of Goods Act 1893, s 35. **E & S Ruben Ltd v Faire Bros & Co Ltd** [1949] 1 215, KBD.

Delivery to employee of purchaser—

Act of purchaser—Goods remaining on premises for three weeks—No act by purchaser in relation to goods—Whether goods accepted by purchaser—Sale of Goods Act 1893, ss 4(3), 35. **Re A Debtor (No 38 of 1938)** [1938] 4 308, ChD.

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From port of transhipment—Dated as from port of loading—Custom of trade. **N V Arnold Otto Meyer v Aune** [1939] 3 168, KBD.

Cargo sold to cargo owners by charterers of ship—

Freight to be payable by cargo owners on arrival of ship—Bills of lading provided for freight to be payable destination—Ship ran aground before reaching destination but was salvaged with cargo—Apportionment of liability to pay salvage reward in respect of ship and cargo—Whether freight element in price of cargo at risk of charters or cargo owners. **The Pantanassa** [1970] 1 848, Adm.

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Delivery to named port—

Right of vendor to insist on delivery at named port. **Fibrosa Société Spolka Akcyjna v Fairbairn Lawson Combe Barbour Ltd** [1942] 2 122, HL.

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Performance possible by route which was not customary—Closing of Suez Canal—Elements to be considered where frustration alleged from impossibility of shipment by customary route. **Albert D Gaon & Co v Société Interprofessionnelle Des Oleagineux Fluides Alimentaires** [1960] 2 160, CA.

Insurance—

Increased premium due to war risk—Goods shipped on ship of belligerent state. **Oulu Osakayetio of Oulu, Finland v Arnold Laver & Co Ltd** [1940] 2 243, CA.

SALE OF GOODS (cont)

C i f contract (cont)—

Obligation of sellers to ship by customary route—

Frustration—Closing of Suez Canal. *Carapanayoti & Co Ltd v E T Green Ltd* [1958] 3 115, QBD.

Passing of property. *See* Passing of property—Reservation of right of disposal—C i f contract, *post*.

Passing of risk. *See* Passing of risk—C i f contracts for sale of goods that in fact were to come from bulk cargo afloat, *post*.

Car—

Contract—

Mistake as to identity of party—Deception. *See* Contract (Mistake—Identity of party—Deception as to identity—Oral offer of car for sale).

Chain of purchases—

Whether circle of contracts genuine transactions. *See* Agent (Creation of agency—Agency for entering into contract).

Condition—

Means of delivery—

Specified steamer—Sale of potatoes—Offer for 'Saturday's steamer'—Acceptance of offer—Condition that goods to be shipped on that steamer—Delay due to failure to load by shipowner—Whether buyer entitled to reject goods. *Wilson v Wright* [1937] 4 371, CA.

Reconditioned goods—

Certificate by third party—Sellers to supply certificate by third party that machines fully re-conditioned to third party's satisfaction—Meaning of 'fully re-conditioned'—Effect of certificate—Whether implied warranty. *Minster Trust Ltd v Traps Tractors Ltd* [1954] 3 136, QBD.

Confirmation of contract—

Confirming house—

Contract 'subject to confirmation and payment by confirming house—Confirmation by confirming house—Cancellation of original orders—Whether confirming house liable as principal. *Rusholme and Bolton and Roberts Hadfield Ltd v S G Read & Co (London) Ltd* [1955] 1 180, Assizes.

Contract—

Breach—

Waiver—Conduct amounting to waiver. *See* Contract (Breach—Waiver—Conduct amounting to waiver—Contract for sale of goods).

Construction. *See* Contract (Construction).

Distinguished from contract for work and labour done and materials supplied—

Contract to make fur jacket to order—Colour of skins and style selected by purchaser—Enforcement of contract—Need for note or memorandum signed by purchaser—Sale of Goods Act 1893, s 4(1). *J Marcel (Furriers) Ltd v Tapper* [1953] 1 15, QBD.

Failure of consideration—

Recovery of money paid. *See* Contract (Failure of consideration—Recovery of money paid—Sale of goods).

Frustration—

Change of circumstances. *See* Contract (Frustration—Change of circumstances—Sale of goods).

Force majeure. *See* Contract (Frustration—Force majeure—Sale of goods).

War. *See* Contract (Frustration—War—Sale of goods).

Mistake as to identity of party—

Deception—Sale of car. *See* Contract (Mistake—Identity of party—Deception as to identity—Oral offer of car for sale).

Repudiation—

Anticipatory breach. *See* Contract (Repudiation—Anticipatory breach—Refusal by seller's agent to deliver goods sold).

Specific performance. *See* Specific performance (Sale of goods).Variation. *See* Contract (Variation—Contract for sale of goods).Contract of carriage. *See* Bill of lading—Delivery order—Contract of carriage, *ante*.

Damages for breach of contract—

Date at which damages assessed. *See* Contract (Damages for breach—Date at which damages assessed).

Foreseeability. *See* Contract (Damages for breach—Foreseeable consequence of breach).

Generally. *See* Contract (Damages for breach—Sale of goods).

Indemnity against claims by sub-purchaser. *See* Contract (Damages for breach—Sale of goods—Indemnity against claims by sub-purchaser).

Loss directly and naturally resulting from breach of warranty. *See* Contract (Damages for breach—Sale of goods—Loss directly and naturally resulting from breach of warranty).

Loss of profit on resale. *See* Contract (Damages for breach—Sale of goods—Loss of profit on resale).

Mitigation of loss. *See* Contract (Damages for breach—Mitigation of loss).

Special damage—

Need to plead. *See* Pleading (Damage—Special damage—Need to plead—Breach of contract).

Default by seller—

Express power of repurchase—

Special procedure under power—Notice to be given of intention to exercise power—Availability of common law remedy—Exercise of common law remedy and exemption from liability to account under express power. *Shipton, Anderson & Co (1927) Ltd (in liquidation) v Micks, Lambert & Co* [1936] 2 1032, KBD.

Defective goods—

Principal and agent—

Liability of principal. *See* Agent (Liability of principal—Defective goods).

SALE OF GOODS (cont)

Deferred payment—

Passing of property. *See* Passing of property—Payment of purchase price—Property passing when contract made—Different intention—Deferred purchase price, *ante*.

Del credere agent. *See* Agent (Del credere agent).

Delivery—

Conditions inhibiting delivery imposed by vendor's supplier—

Dealer to use his 'best endeavours to secure delivery' within reasonable time or by specified date—Conditions in regard to sale by dealer imposed by manufacturer after date of contract between dealer and customer—Customer required to enter into covenant against re-sale—Refusal by customer to enter into covenant—Refusal by manufacturer to deliver car to dealer for appropriation to customer—Liability of dealer. **Monkland v Jack Barclay Ltd** [1951] 1 714, CA.

Delivery to be within reasonable time—Refusal by manufacturer to supply dealer except subject to conditions regarding sale by dealer unacceptable by purchaser—Liability of dealer. **Hartwells of Oxford Ltd v British Motor Trade Assn** [1950] 2 705, CA.

Defence to action for failure to deliver—

Purported compliance with control order—Sale of timber—Government order prohibiting disposal of timber coming into force after contract—Order not prohibiting delivery under contract already made. **Rappaport v London Plywood and Timber Co Ltd** [1940] 1 576, KBD.

Implied condition—

Contract for sale of future goods—Contract for sale of about 275 tons of barley to be grown on seller's land—Crop yielding only 140 tons—Seller failing to deliver 140 tons to buyer—Whether implied condition of contract that seller released from obligation to deliver any barley if unable to deliver full amount—Sale of Goods Act 1893, ss 5(2), 61(2). **H R & S Sainsbury Ltd v Street** [1972] 3 1127, Assizes.

Insolvency of seller—

Clause providing for insolvency—Notice condition precedent—Clause providing for default—Voluntary default—General Produce Brokers' Association contract. **J F Adair & Co Ltd v Birnbaum** [1938] 4 775, CA.

Partial failure to deliver—

Delivery of lesser quantity—Rights of purchaser—Prescribed and non-prescribed conditions—Inconsistency—Control of Timber (No 21) Order 1941 (S R & O 1941 No 2088), arts 1(1), (2), 6, Sch III. **Wilkinson v Barclay** [1946] 2 337, CA.

Wrong quantity—

Printed words—Compensation for undershipment—Typewritten words—'Sold subject to shipment'—Short delivery—Liability of sellers. **Hollis Bros & Co Ltd v White Sea Timber Trust Ltd** [1936] 3 895, KBD.

Description—

False trade description. *See* Trade Description.

Implied condition as to merchantable quality. *See* Implied condition as to merchantable quality—

Goods bought by description, *post*.

Implied condition goods correspond with description. *See* Implied condition goods correspond with description, *post*.

Shipment of goods—

Contract containing clause, 'Shipment and destination: Afloat per s s Morton Bay due London approximately June 8'—Whether condition of contract that goods shipped on a ship which at date of contract due to arrive approximately on that date. **Macpherson Train & Co Ltd v Howard Ross & Co Ltd** [1955] 2 445, QBD.

Trade description—

Mutual ignorance as to deficiency in quality—Goods of contract description supplied—Validity of contract. **Harrison & Jones Ltd v Bunten & Lancaster Ltd** [1953] 1 903, QBD.

Detention by purchaser—

Passing of property—

Detention beyond reasonable time. *See* Passing of property—Detention beyond reasonable time, *post*.

Disposition by seller in possession after sale—

Delivery of the goods under any disposition—

Disposition—Seller in possession having purchased car from previous sellers—Seller remaining in possession after subsequent sale of car to finance company—Seller's cheque to previous sellers dishonoured—Retaking of car by previous sellers from seller's custody with his acquiescence—Previous sellers unaware at time of retaking of subsequent sale to finance company—Whether retaking a delivery of the car under a disposition thereof—Sale of Goods Act 1893, s 25(1). **Worcester Works Finance Ltd v Cooden Engineering Co Ltd** [1971] 3 708, CA.

Goods bought by finance company from motor car dealer for purpose of hire-purchase transactions—

Motor car dealer continuing in Possession with authority to resell in own name and retain purchase money—Authority subject only to obligation to account to finance company—Sale by dealer to third party—Title of third party to goods purchased from dealer. **Pacific Motor Auctions Pty Ltd v Motor Credits (Hire Finance) Ltd** [1965] 2 105, PC.

Goods sold to finance company in hire-purchase transaction—

Subsequently seized by shopkeeper—Resale for cash—Title of second purchaser—Bills of Sale Act 1878—Bills of Sale Act (1878) Amendment Act 1882—Sale of Goods Act 1893, s 25(1). **Olds Discount Co Ltd v Krett and Krett** [1940] 3 36, KBD.

Hire of goods by vendor under hire-purchase agreement—

Goods remaining in possession of vendor—Subsequent sale by vendor—Whether subsequent sale effective to transfer title—Factors Act 1889, s 8. **Union Transport Finance Ltd v Ballardie** [1937] 1 420, Assizes.

SALE OF GOODS (cont)

Disposition by seller in possession after sale (cont)—

Possession of agent—

Pledge by vendor in possession—Warehouseman—Whether goods in possession of vendor when in possession of agent—Sale of Goods Act 1893, s 25(1). **City Fur Manufacturing Co Ltd v Furenbond (Brokers) London Ltd** [1937] 1 799, KBD.

Seller continuing in possession—

Unlawful possession—Sale of car to finance company—Finance company hiring car to third party on hire-purchase terms—Seller remaining in possession of car without knowledge of finance company—Subsequent disposition of car by seller—Whether relevant that seller's continued possession wrongful—Whether disposition passing a good title—Sale of Goods Act 1893, s 25(1). **Worcester Works Finance Ltd v Cooden Engineering Co Ltd** [1971] 3 708, CA.

Duty of seller—

Export licence—

Licence for export from Finland necessary—Contract provided for delivery as soon as export licence granted—Licences granted only to members of Finnish exporters' association—Sellers not members of association—Whether sellers liable in damages for failure to deliver goods. **Peter Cassidy Seed Co Ltd v Osuustukkukauppa I L** [1957] 1 484, QBD.

Enforcement—

Contract of sale—

Distinction from contract for work and labour done and materials supplied. *See* Contract of sale—Distinguished from contract for work and labour done and materials supplied, *ante*.

Exception clause—

Latent defects. *See* Implied condition as to fitness—Exception clause for latent defects, *post*.

Export—

Payment—

Exchange control. *See* Currency control (Exchange control—Payment for exports—Export of goods to destination outside scheduled territories).

Export licence—

Duty to obtain licence—

Buyer or seller's duty—Licence necessary for export—English contract—Export licences granted only to Portuguese suppliers. **A V Pound & Co Ltd v M W Hardy & Co Incorporated** [1956] 1 639, HL.

Duty of seller. *See* Duty of seller—Export licence, *ante*.

F o b contract—

Credit. *See* Payment—Confirmed letter of credit—F o b contract, *post*.

False trade description. *See* Trade description (False trade description).Feeding stuffs. *See* Agriculture (Feeding stuffs—Sale as use as food for cattle and poultry).

Fertiliser—

Analysis of sample. *See* Agriculture (Fertiliser—Analysis of sample).

Firearms—

Restrictions on sale. *See* Firearms (Restrictions on sale).

Fitness for purpose—

Implied condition. *See* Implied condition as to fitness, *post*.

Food and drugs. *See* Food and drugs.

Fraud—

Election of seller to avoid contract for fraud. *See* Voidable title—Fraud—Election of seller to avoid contract for fraud, *post*.

Frustration—

C i f contract. *See* C i f contract—Frustration, *ante*.

Force majeure. *See* Contract (Frustration—Force majeure—Sale of goods).

Hire-purchase. *See* Hire-purchase.

Identity of party—

Deception as to identity of purchaser. *See* Contract (Mistake—Identity of party—Deception as to identity).

Implied condition—

Vendor's right to sell. *See* Title—Implied condition of vendor's right to sell, *post*.

Implied condition as to fitness—

Abnormal circumstances—

Idiosyncrasy of buyer—Idiosyncrasy not made known to seller—Sale of tweed coat specially made for buyer—Dermatitis—Buyer having abnormally sensitive skin—Whether seller liable for breach of implied condition of fitness—Sale of Goods Act 1893, s 14(1). **Griffiths v Peter Conway Ltd** [1939] 1 685, CA.

Contract for work and materials. *See* Building contract (Warranty—Implied warranty—Fitness or quality of materials).

Contract partly for the sale of goods and partly for rendering of services—

Dangerous hair dye. **Watson v Buckley, Osborne, Garrett & Co Ltd, and Wyrovoy's Products Ltd** [1940] 1 174, Assizes, **Ingham v Emes** [1955] 2 740, CA.

Exception clause for latent defects—

Incorporation of clause inferred from course of bargaining—Buyers and sellers members of London Cattle Food Association—Whether inference that buyers relied on sellers' skill and judgment should be made—Condition of fitness of ground nut extracts for re-sale for use for food for cattle or poultry—Unfit for food for poultry—Whether implied condition broken—Compounded food fed to pheasants—Remoteness of damage—Sale of Goods Act 1893, s 14(1)(2). **Henry Kendall & Sons (A Firm) v William Lillico & Sons Ltd** [1968] 2 444, HL.

Fitness for human consumption—

Food poisoning—Husband and wife lunching in hotel—Husband paying for meal—Wife taken ill by food poisoning—Whether wife entitled to sue in contract. **Locket v A & M Charles Ltd** [1938] 4 170, KBD.

SALE OF GOODS (cont)

Implied condition as to fitness (cont)—

Foreign undisclosed principal as purchaser—

Purpose for which goods required made known to sellers—Sale of Goods Act 1893, s 14(1). **Teheran-Europe Co Ltd v S T Belton (Tractors) Ltd** [1968] 1 585, QBD.

Goods of a description which it is in course of the seller's business to supply—

Description—Seller compounder of animal feeding stuffs—Contract to supply food for mink—Seller having no Previous experience in dealing with mink food—Whether mink food goods of a description which is in course of business to supply—Mink food compounded according to buyer's formula—In course of seller's business to supply ingredients—Mink food goods 'of a kind' which in course of business to supply—Contract for sale of mink food made in way of business—Sale of Goods Act 1893, s 14(1)(2). **Ashington Piggeries Ltd v Christopher Hill Ltd** [1971] 1 847, HL.Goods within general description though taking special form or designed for special use—Sale of Goods Act 1893, s 14(1). **Spencer Trading Co Ltd v Devon (Fixol and Stickphast Ltd, third parties)** [1947] 1 284, KBD.

Particular purpose made known to seller—

Disclosure of purpose by agent—Motor tractor sold for road construction purposes—Disclosure of Purpose made by gratuitous agent of purchaser—Whether buyer showing reliance on seller's skill or judgment—New South Wales Sale of Goods Act 1923—53, s 19(1). **Council of the Shire of Ashford v Dependable Motors Pty Ltd** [1961] 1 96, PC.General purpose known to seller—Herring meal—Use in compounding mink food—Knowledge of seller that herring meal required for compounding animal feeding stuffs—Knowledge that herring meal had been used for preparing mink food—Sellers unaware that particular consignment required for mink food—Herring meal contaminated by DMNA—DMNA toxic to mink—Whether use for compounding animal feeding stuffs sufficiently definite to constitute particular purpose—Sale of Goods Act 1893, s 14(1). **Ashington Piggeries Ltd v Christopher Hill Ltd** [1971] 1 847, HL.Nature of buyer's business known to seller's agents—Potatoes for human consumption in England shipped from Cyprus—Deterioration of potatoes in transit—Sale of Goods Act 1893, s 14(1)(2). **Mash & Murrell Ltd v Joseph I Emanuel Ltd** [1962] 1 77, CA.Resale in foreign country—Air compressors—Purpose of resale in Persia made known to seller—Buyers a Persian company undisclosed principals—Buyers relied on own skill and judgment—No warranty of fitness for resale in Persia implied—Sale of Goods Act 1893, ss 13(1), 14(1). **Teheran-Europe Co Ltd v S T Belton (Tractors) Ltd** [1968] 2 886, CA.Vehicle—Fitness to be driven on road—Secondhand motor car—Engine seizing up after 2, 300 miles—Replacement engine necessary—Whether car reasonably fit for purpose of being driven on road at time of sale—Sale of Goods Act 1893, s 14(1). **Crowther v Shannon Motor Co (a firm)** [1975] 1 139, CA.Warning of hazard—Chemical sold in glass ampoules for use in manufacturing process—Choice of chemical made by purchaser—Danger of explosion if in contact with water—Warning by seller only of harmful vapour—Course of previous dealing between parties reasonably causing reliance on seller to give adequate warning of dangerous hazard—Explosion causing death and extensive damage when ampoules broken while being washed—Whether goods fit for purpose if not adequately labelled with warning of explosion hazard—Sale of Goods Act 1893, s 14(1). **Vacwell Engineering Co Ltd v B D H Chemicals Ltd** [1969] 3 1681, QBD.

Reasonably fit—

Secondhand motor car—Buyer told of defect in clutch—Car driven for four weeks without trouble—Defect in clutch then found to be serious—Whether breach of implied condition that car reasonably fit for purpose—Sale of Goods Act 1893, s 14(1)(2). **Bartlett v Sidney Marcus Ltd** [1965] 2 753, CA.

Reliance on seller's skill and judgment—

Partial reliance—Idiosyncrasy of purchaser outside seller's sphere of expertise—Onus of proof—Seller compounder of animal feeding stuffs—Buyer requiring food for mink—Seller having no experience of mink food—Contract to supply mink food according to buyer's formula—Reliance on seller to supply ingredients suitable for feeding to animals generally—Herring meal in mink food contaminated by DMNA—DMNA toxic to mink—Evidence whether DMNA harmful to animals generally—Onus on sellers to prove affirmatively that DMNA harmless to animals other than mink—Sale of Goods Act 1893, s 14(1). **Ashington Piggeries Ltd v Christopher Hill Ltd** [1971] 1 847, HL.

Implied condition as to merchantable quality—

Exclusion of implied term—

Deterioration of perishable goods—Express condition that seller take reasonable care to protect goods and notify any deterioration—Sale of potatoes—Deterioration of potatoes—Whether breach of implied condition as to merchantable quality—Sale of Goods Act 1893, ss 14(2), 55. **Horn v Minister of Food** [1948] 2 1036, KBD.Goods manufactured to precise specification—
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Goods brought by description—

Lemonade—Sale of lemonade containing poison—Liability of retailer—Whether goods bought by description—Sale of Goods Act 1893, s 14(1)(2). **Daniels and Daniels v R White & Sons Ltd and Tarbard** [1938] 4 258, KBD.

Goods bought by description—

Sale over counter—Catapult—Purchaser boy aged six—Catapult displayed in shop window where seen by boy who then purchased it in shop—Reliance on seller's skill or judgment—Whether sale by description—Sale of Goods Act 1893, s 14(2). **Godley v Perry (Burton & Sons (Bermondsey) Ltd third party, Graham fourth party)** [1960] 1 36, QBD.Unsuitable for contract purposes—Goods sold for lower price for another purpose—Whether abatement of price indicative that goods not of merchantable quality—Sale of Goods Act 1893, s 14(2). **B S Brown & Son Ltd v Craiks Ltd** [1970] 1 823, HL.

SALE OF GOODS (cont)

Implied condition as to merchantable quality (cont)—

Merchantable quality—

Words to be construed in commercial sense—Goods of merchantable quality if saleable for ordinary use for which goods of that description bought and sold—Price—Relevance—Goods suitable for ordinary use but because of poor condition only saleable at price substantially below contract price—Whether goods 'of merchantable quality'—Sale of Goods Act 1893, s 14(2). **Cehave NV v Bremer Handelsgesellschaft mbH** [1975] 3 739, CA.

Part of goods only not merchantable—

Unfit goods in consignment—Explosive substance in consignment of fuel—Whether whole consignment unmerchantable—Sale of Goods Act 1893, s 14(2). **Wilson v Rickett, Cockerell & Co Ltd** [1954] 1 868, CA.

Implied condition goods correspond with description—

Correspondence with description—

Contamination of goods—Herring meal—Herring meal a constituent of mink food—Contamination of herring meal by DMNA—Formation from chemical reaction of sodium nitrite—Sodium nitrite used as preservative of herring—Contamination by DMNA not resulting in different substance to herring meal—Defect a matter of quality or condition rather than of description—Sale of Goods Act 1893, s 13. **Ashington Piggeries Ltd v Christopher Hill Ltd** [1971] 1 847, HL.

Goods to be loaded on deck—Stipulation in contract that timber 'to be loaded on deck one-third'—More than one-third loaded on deck—Whether buyers entitled to reject on ground of failure to correspond with description. **Messers Ltd v Morrison's Export Co Ltd** [1939] 1 92, KBD.

Identification of goods—

Stipulation as to quality distinguished—Herring meal—Contract for sale of 'Norwegian herring meal fair average quality of the season'—Fair average quality of season not part of description—Stipulation as to quality only and not for purpose of identifying goods. **Ashington Piggeries Ltd v Christopher Hill Ltd** [1971] 1 847, HL.

Sale by description—

Car advertised as 1961 model—Car in fact made up of rear of 1961 car and front of earlier model—Car examined by buyer before sale—Deviation from description in advertisement not apparent on reasonable examination and not known to either buyer or seller—Whether a sale of goods by description—Sale of Goods Act 1893, s 13. **Beale v Taylor** [1967] 3 253, CA.

Words of description—

Safety glass—Laminated glass—Words 'safety glass' generally understood to mean laminated glass—Whether warranty of absolute safety—Sale of Goods Act 1893, ss 13, 14(2). **Grenfell v E B Mayrowitz Ltd** [1936] 2 1313, CA.

Implied warranty—

Reconditioned goods—

Certificate by third party. *See* Condition—Reconditioned goods—Certificate by third party, *ante*.

Implied warranty as to quiet possession—

Interference with possession by title paramount—

Exception to implied warranty in case of disturbance by title paramount—Sale of stolen property—Whether implied exception to warranty as to quiet possession in case of disturbance by title paramount—Sales of Goods Act 1893, s 12(2). **Mason v Burningham** [1949] 2 134, CA.

Title paramount not in existence at date of sale—Sale of machinery—Application by third party for patent—Complete specification published after sale of machinery—Patentee's rights having retrospective effect—Seller and buyer unaware of patent at date of sale—Action by patentee against buyer for infringement of patent by using machinery—Action constituting interference with buyer's possession—Whether seller in breach of warranty as to quiet possession—Sale of Goods Act 1893, s 12(2). **Microbeads AC v Vinhurst Road Markings Ltd** [1975] 1 529, CA.

Injunction. *See* Injunction (Sale of goods).

Injunction—

Form of order. *See* Injunction (Form of order—Sale of goods).

Insolvency of seller—

Delivery of goods. *See* Delivery—Insolvency of seller—Clause providing for insolvency, *post*.

Intoxicating liquor—

Offence—

Sale without licence. *See* Licensing (Sale of liquor by retail without licence).

Market overt—

Market constituted by charter or statute—

Private sale—Goods offered by auction in public market—Subsequent private sale in same market—Sale of Goods Act 1893, s 22(1). **Bishopsgate Motor Finance Corp Ltd v Transport Brakes Ltd** [1949] 1 37, CA.

Sale between sunrise and sunset—

Buyer acquiring good title—Necessity of showing that sale took place between sunrise and sunset—Sale of Goods Act 1893, s 22(1). **Reid v Comr of Police of the Metropolis** [1973] 2 97, CA.

Medicine. *See* Medicine (Sale by retail).

Mercantile agent. *See* Agent (Mercantile agent).

Merchantable quality—

Implied condition. *See* Implied condition as to merchantable quality, *ante*.

Misrepresentation—

Fraudulent misrepresentation. *See* Misrepresentation (Fraudulent misrepresentation—Sale of goods).

Innocent misrepresentation. *See* Misrepresentation (Innocent misrepresentation—Sale of goods).

SALE OF GOODS (cont)

Misrepresentation (cont)—

Warranty distinguished. *See* Warranty—Misrepresentation distinguished, *post*.

Mistake—

Price. *See* Mistake (Price of subject—matter of transaction).Rectification. *See* Mistake (Rectification—Sale of goods).

Motor car—

New car—

Injunction against selling as new a car that was not new. **Morris Motors Ltd v Phelan** [1960] 2 208, ChD.When a car ceases to be new. **Morris Motors Ltd v Lilley** (trading as G & L Motors) [1959] 3 737, ChD.

Motor vehicle—

Sale in unroadworthy condition. *See* Road traffic (Motor vehicle—Sale in unroadworthy condition).

Nature of transaction—

Consideration—

Goods produced 'for general sale'—Purchase tax. *See* Purchase tax (Chargeable goods—Pictures, prints, engravings etc—Goods produced in quantity for general sale).

Non-acceptance—

Damages. *See* Contract (Damages for breach—Sale of goods—Non-acceptance).

Note or memorandum in writing—

Particulars of transaction in document not signed by party to be charged—

Letter signed by that party to third person referring to transaction—Sale of Goods Act 1893, s 4(1). **L D Turner Ltd v R S Hatton (Bradford) Ltd** [1952] 1 1286, Assizes.

Signature of auctioneers' employee on behalf of purchaser—

Action by auctioneer—Whether signature sufficient to bind purchaser in action by auctioneer—Sale of Goods Act 1893, s 4(1). **Wilson v Pike** [1948] 2 267, CA.

Sufficiency—

Omission of vendor's name—Deficiency supplied by purchaser's admission—Omission of term as to delivery—Sale of Goods Act 1893, s 4(1). **Walford v Narin** [1948] 2 85, KBD.

Obtaining credit by fraud—

Credit. *See* Criminal law (Obtaining credit by fraud—Credit—Sale of goods).

Offer for sale or invitation to treat—

Advertisement of Bramblefinch hens at 25s each in periodical under classified advertisements. *See* Animal (Protection—Bird—Restriction on sale or offer for sale of live wild bird—'Offer for sale').Part exchange. *See* Price—Sale for cash and part exchange, *post*.

Passing of property—

Acceptance of goods. *See* Acceptance, *ante*.

Approval of sample—

Import of goods—Failure to obtain import licence—Acceptance of shipping documents by buyers—Whether approval of sample condition precedent to payment—Whether condition operative where it cannot be fulfilled owing to buyer's default. **Mitchell Cotts & Co (Middle East) Ltd v Hairco Ltd** [1943] 2 552, CA.

Ascertained goods—

Purchase price provided by auctioneers—Bankruptcy of purchaser—Whether property in goods in purchaser or auctioneers—Sale of Goods Act 1893, s 17(1). **Re Capon** [1940] 2 135, CA.Auction. *See* Auction (Passing of property).

Bargain to give contents of house in return for services—

Common establishment—Housekeeper undertaking to look after children permanently—Sale of Goods Act 1893, s 18, r 1. **Koppel v Koppel (Wide claimant)** [1966] 2 187, CA.

Detention beyond reasonable time—

Reasonable time a question of fact depending on circumstances—Car delivered on sale or return in summer holiday period—Judicial notice of decline of secondhand car market in autumn—Car not returned by mid-November—Sale of Goods Act 1893, s 18, r 4(b). **Poole v Smith's Car Sales (Balham) Ltd** [1962] 2 482, CA.

Goods to be collected—

Agreement to collect scrap metal from artillery ranges—Collector entitled to retain as his property goods 'collected therefrom'—Metal collected in a dump but not removed from the ranges—Whether collector having acquired ownership of metal. **Gale v New** [1937] 4 645, CA.

Payment against delivery order—

Payment on receipt of delivery order containing undertaking and guarantee by sellers' agent—Delivery rendered impossible owing to enemy occupation of place of delivery—Whether total failure of consideration—Whether buyer entitled to recover payment. **Comptoir D'Achat et de Vente du Boerenbond Belge SA v Luis de Ridder Limitada** [1949] 1 269, HL.

Payment by instalments—

Effect of clause that property should pass on payment of first instalment—Contract to build yacht—No evidence that on payment of first instalment construction of yacht had begun—Purchaser not bound to accept delivery if he was not reasonably satisfied with the performance of the craft on its trial run—Whether performance covered defective workmanship and materials and non-compliance with specification. **McDougall v Aeromarine of Emsworth Ltd** [1958] 3 431, QBD.

Payment of purchase price—

Property passing when contract made—Different intention—Deferred purchase price—Agreement giving use subject to payment of interest and depreciation—Whether sale with provision for instalments or agreement to sell—Sale of Goods Act 1893, s 18, r 1. **Re Anchor Line (Henderson Bros) Ltd** [1936] 2 941, CA.

SALE OF GOODS (cont)

Passing of property (cont)—

Reservation of right of disposal—

C i f contract—Presumption that property not passing until presentation of documents and payment of price—Contrary intention appearing from circumstances—Conduct and relationship of parties—Contract between associated companies—Bill of lading—Goods deliverable to order of seller—Goods delivered to carrier for shipment—Payment against documents not required—Seller's agents despatching endorsed bill of lading to buyer by post during voyage—Seller having power to divert goods before despatch of bill of lading—Whether property passing on date bill of lading posted. **The Albazero** [1975] 3 21, CA.

Theft—

Property belonging to another. *See* Criminal law (Theft—Property belonging to another—Sale of goods—Passing of property).

Unascertained goods in possession of third party—

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Duty of purchaser to account for proceeds of sub-sales—Fiduciary duty as agent and bailee of goods—Right of vendor to trace and recover proceeds of sub-sales in priority to other creditors of purchaser—Contract reserving property in goods after delivery until full price paid—Implied power of purchaser to sell goods as agent of vendor—Implied duty to account to vendor for proceeds of sub-sales—Purchaser in financial difficulties—Receiver appointed—Whether vendor entitled to trace and recover proceeds of sub-sales in priority to secured and unsecured creditors. **Aluminium Industrie Vaassen BV v Romalpa Aluminium Ltd** [1976] 2 552, CA.

Passing of risk—

C i f contracts for sale of goods that in fact were to come from bulk cargo afloat—

Bills of lading issue by sub-time charterers—Delivery orders issue by sellers, without option to do so under contracts—Time when risk passed. **Margarine Union GmbH v Cambay Prince Steamship Co Ltd** [1967] 3 775, QBD.

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Buyer's liability for loss—Sale of Goods Act 1893, s 20. **Demby Hamilton & Co Ltd v Barden (Endeavour Wines Ltd third party)** [1949] 1 435, KBD.

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Time for issuing. **Sinason-Teicher Inter-American Grain Corp v Oilcakes and Oilseeds Trading Co Ltd** [1954] 3 468, CA.

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Credit available on presentation *inter alia* of bills of lading—Bills presented must normally be clean bills of lading—Condition on back of bills of lading absolving shippers from liability if goods not marked and secured in accordance with condition—Whether acknowledgment of compliance with condition must be tendered before payment under letter of credit—Validity of condition—Carriage of Goods by Sea Act 1924, Sch, art IV, r 2(n), (o), art III, r 8. **British Imex Industries Ltd v Midland Bank Ltd** [1958] 1 264, QBD.

Time for opening credit. **Pavia & Co SPA v Thurmann-Nielsen** [1952] 1 492, CA.

Confirmed letter of credit—

Confirmed irrevocable letter of credit established—Effect—Whether constituting absolute or conditional payment—Construction of contract—Letter of credit ordinarily operating as conditional payment—Payment absolute and buyer discharged from liability when letter of credit honoured by confirming bank. **W J Alan & Co Ltd v El Nasr Export & Import Co** [1972] 2 127, CA.

F o b contract—Time when credit should be opened. **Ian Stach Ltd v Baker Bosly Ltd** [1958] 1 542, QBD.

Injunction—Application for injunction restraining sellers dealing with second of two letters of credit—Dispute regarding quality of goods sold. **Malas (trading as Hamzeh Malas and Sons) v British Imex Industries Ltd** [1958] 1 262, CA.

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Sale of vehicle for specified price—Part of Price to be satisfied by exchange of vehicles within stipulated time—Failure of exchange—Whether seller entitled to sue for whole price. **G J Dawson (Clapham) Ltd v H & G Dutfield** [1936] 2 232, KBD.

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Construction of clause—Sale of steel—Quantity expressed as 'Buyer's requirements up to 8,000 tons'—Whether mere option to purchase any quantity up to 8,000 tons—Whether buyer only entitled to demand steel actually required for business. **J L Kier & Co Ltd v Whitehead Iron and Steel Co Ltd** [1938] 1 591, KBD.

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Strict construction—Not excluding liability for damages. **Ashington Piggeries Ltd v Christopher Hill Ltd** [1971] 1 847, HL.

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Notice within time limit in respect of claims for quality or condition—Sale of marked goods—Whether restrictions on rejection applying to unmarked goods—Whether buyer entitled to reject unmarked goods—Timber not properly seasoned—Faulty manufacture. **Vsesojwzjoje Objedeninije 'Exportles' v T W Allen & Sons Ltd** [1938] 3 375, KBD.

Variation from specification greater than that permitted by contract—Restriction on rejection of 'the goods herein named nor any part of them'. **Wilensko Slaski Towarzystwo Drewno v Fenwick & Co (West Hartlepool) Ltd** [1938] 3 429, KBD.

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Separate documents for each 1,000 units and each 1,000 units to be considered a separate contract—Notice of appropriation for about 15,444 units—First provisional invoice for 15,444 units—Amended provisional invoice for 15,000 units—Validity of first tender—Whether withdrawn by amended provisional invoice—Validity of second tender—Sale of Goods Act 1893, ss 17, 18, 19, 30, 31, 32. **Ross T Smyth & Co Ltd v T D Bailey, Son & Co** [1940] 3 60, HL.

Severability of contract—

Separate consignments—Rejection of second consignment of goods following acceptance of first—Seller having option to perform contract by making one or more shipments—Each shipment to be deemed a separate contract—Goods shipped in two consignments in one ship on same date under separate bills of lading—Whether more than one shipment and thus separate contracts entitling buyer who had accepted one consignment to reject the other—Sale of Goods Act 1893, s 11(1)(c). **J Rosenthal & Sons Ltd v Esmail (trading as H M H Esmail & Sons)** [1965] 2 860, HL.

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'Ship's delivery order'—

Request to ship to deliver goods to buyers—Order addressed by shipowner to dock master porter—Shipment of goods to named port—Shipment to different port and transhipment to named port—Buyer's right to reject. **Colin and Shields v W Weddel & Co Ltd** [1952] 2 337, CA.

Sale by sample—

Breach of condition as to quality—

Offer by defendants to accept return of undisposed stock—Offer rejected—Damages—Mitigation—Duty of plaintiffs to ascertain precise meaning of offer—Sale of Goods Act 1893, ss 35, 56. **Houndsditch Warehouse Co Ltd v Waltex Ltd** [1944] 2 518, KBD.

Goods not in accordance with sample—

Simple process necessary to make goods correspond with sample—Whether right of rejection on ground goods not in accordance with sample. **E & S Ruben Ltd v Faire Bros & Co Ltd** [1949] 1 215, KBD.

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Sale by sample (cont)—

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Sale between wholesalers—Defect not apparent on examination—Sale of Goods Act 1893, s 15(2)(c). **Godley v Perry (Burton & Sons (Bermondsey) Ltd third party, Graham fourth party)** [1960] 1 36, QBD.

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Yacht required for use in 1957 yachting season—Fixed delivery date but delivery on that date not guaranteed—Reasonable time—Whether a condition of the contract—Sale of Goods Act 1893, s 10(1). **McDougall v Aeromarine of Emsworth Ltd** [1958] 3 431, QBD.

Time of the essence—

Original condition in regard to time waived—Subsequent notice fixing time for completion—Reasonableness—Conduct amounting to waiver. **Charles Rickards Ltd v Oppenheim** [1950] 1 420, CA.

Title—

Illegality of related agreement—

Finance company purchasing motor car outright with intention to let it under hire-purchase agreement—Hire-purchase agreement illegal by reason of non-payment of initial deposit required by statutory regulations—Whether finance company's title under original sale vitiated by illegality of hire-purchase agreement so as to preclude later claim in action for conversion of motor car. **Belvoir Finance Co Ltd v Harold G Cole & Co Ltd** [1969] 2 904, QBD.

Implied condition of vendor's right to sell—

Breach—Total failure of consideration—Recovery of purchase price—Motor car sold by hirer in breach of hire-purchase agreement—Re-sold in good faith—Contract of sale rescinded by purchaser—Damages—Sale of Goods Act 1893, s 12(1). **Butterworth v Kingsway Motors Ltd, Hayton, third party, Kennedy, fourth party, Rudolph, fifth party** [1954] 2 694, Assizes.

Motor vehicle subject to hire-purchase agreement—

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Sale before goods purchased—Hirer having option to purchase goods sold—Re-sale by purchaser—Hirer subsequently exercising option—Whether title of subsequent purchasers made good on hirer acquiring title. **Butterworth v Kingsway Motors Ltd (Hayton, third party, Kennedy, fourth party, Rudolph, fifth party)** [1954] 2 694, Assizes.

Sale of car by dealer to finance company under illegal contract—

Car let out by finance company to hirer under illegal hire-purchase agreement—Car delivered by dealer straight to hirer—Car sold to third party by hirer's salesman—Whether hirer's salesman liable in conversion. **Belvoir Finance Co Ltd v Stapleton** [1970] 3 664, CA.

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Irrelevance of whether sale was or was not in ordinary course of business. **Lloyds and Scottish Finance Ltd v Williamson** [1965] 1 641, CA.

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No authority to sell—Seller an apparently reputable motor dealer—Owner not precluded by negligence from denying seller's authority to sell—Title of owner against bona fide purchaser for value from seller—Sale of Goods Act 1893, s 21(1). **Mercantile Credit Co Ltd v Hamblin** [1964] 3 592, CA.Transit. *See* Stoppage in transit, *ante*.

Unpaid seller—

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Resale—

Effect as rescission of contract of sale—Resale of part of goods sold—Right to retain proceeds of resale—Right to sue buyer for damages for non-acceptance, but not for price—Measure of damages—Sale of Goods Act 1893, s 48(3). **R V Ward Ltd v Bignall** [1967] 2 449, CA.Exercise by seller of right of resale on failure of buyer to pay price—Buyer's right to recover deposit—Sale of Goods Act 1893, s 48(3). **Gallagher v Shilcock** [1949] 1 921, KBD.Variation of contract. *See* **Contract** (Variation—Contract for sale of goods).

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Election of seller to avoid contract for fraud—Whether seller must communicate election to purchaser if purchaser's title is to be avoided. **Car and Universal Finance Co Ltd v Caldwell** [1964] 1 290, CA.

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Sale before avoidance—Voidable contract—Fraud—Hire-purchase of motor car—Hirer selling car for cash and another car—Resale of second car before title avoided—Whether resale effective to transfer title—Sale of Goods Act 1893, ss 12(1), 23. **Robin and Rambler Coaches Ltd v Turner** [1947] 2 284, KBD.

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Auction—

Conditions in catalogue excluding warranty unless specially mentioned and appearing in account—Oral guarantee. **Harling v Eddy** [1951] 2 212, CA.Stipulations in catalogue and conditions of sale excluding auctioneer from responsibility for misdescription—Verbal assurance of condition—Breach—Right of buyer to damages. **Couchman v Hill** [1947] 1 103, CA.Feeding stuffs. *See* **Agriculture** (Feeding stuffs—Sale for use as food for cattle and poultry—Implied warranty suitable for use as such).

Fertilizers and Feeding Stuffs Act 1926—

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Inference that representation intended to be a warranty—Representation made for purpose of inducing person to enter into contract—Representation acted on—Sale of secondhand motor car—Misrepresentation as to mileage—Purchaser thereby induced to buy car—Whether warranty or innocent misrepresentation. **Dick Bentley Productions Ltd v Harold Smith (Motors) Ltd** [1965] 2 65, CA.Sale of motor car to dealers—Vendor honestly believing car 1948 model—Car in fact 1939 model—Whether vendor having warranted that car 1948 model—Whether innocent misrepresentation. **Oscar Chess Ltd v Williams** [1957] 1 325, CA.Sale of motor vehicle—Wrong entry in registration book—Seller having bought vehicle after entry made—Seller not responsible for wrong entry—Memorandum of agreement for sale not referring to date of model—Whether wrong entry a representation or a warranty. **Routledge v McKay** [1954] 1 855, CA.

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Letter communicating acceptance containing qualification by mistake—Tender documents containing full particulars of contract and nothing further to be negotiated—Words 'subject to contract' meaningless—Whether words should be expunged—Whether acceptance constituting a contract. **Michael Richards Properties Ltd v Corpn of Wardens of St Saviour's Parish, Southwark** [1975] 3 416, ChD.

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Special condition of sale stipulating for statutory declaration of twenty years' undisputed possession of part of the land—Vendors unable to show undisputed possession for that period—Vendors offered proof of twelve years adverse possession—Purchasers required the land in question to enable them to effect development—Whether contract enforceable. **George Wimpey & Co Ltd v Sohn** [1966] 1 232, CA.

Remedy—

Damages or specific performance—Election providing that vendor permitted to resell land if purchaser failed to complete—Provision that if vendor resold at a loss purchaser to pay difference as liquidated damages—Vendors seeking specific performance of contract—Purchaser not complying with decree of specific performance—Vendors seeking to repudiate contract and resell land—Whether vendors entitled to claim damages for any loss on resale. **Capital and Suburban Properties Ltd v Swycher** [1976] 1 881, CA.

Builder—

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Duty. *See* **Company** (Compulsory winding-up—Liquidator—Duty—Sale of land).Memorandum of contract. *See* Memorandum of contract—Company, *post*.

Completion—

Failure to complete purchase—

Time not initially of the essence—Vendor subsequently purporting to make time of essence—No impropriety on part of purchaser—Request for delay—Right of vendor to forfeit deposit and resell—Damages when property wrongfully resold. **Smith v Hamilton** [1950] 2 928, ChD.

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Deposit. *See* Deposit—Condition precedent, *post*.

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Condition (cont)—

Condition to which effect not given by conveyance but capable of taking effect after completion—

Condition requiring vacant possession on completion—Failure to give vacant possession—Breach of contract for sale—Law Society's Conditions of Sale 1953, condition 33. **Hissett v Reading Roofing Co Ltd** [1970] 1 122, ChD.

Consent to assignment of leasehold interest. *See* Leasehold interest—Contract—Condition—Subject to landlord's consent to assignment, *post*.

Consent to sale required by statute—

Contract expressed to be subject to obtaining consent—Consent not having been obtained when contract made—Consent obtained subsequently—Vendors a charity—Consent to sale by Charity Commissioners—Whether contract invalid because of failure to obtain prior consent—Charities Act 1960, s 29(1). **Michael Richards Properties Ltd v Corporation of Wardens of St Saviours Parish, Southwark** [1975] 3 416, ChD.

Sale by charity—Consent of Charity Commissioners—Absence of consent at date of contract—When sale is made—Charitable Trusts Amendment Act 1855, s 29. **Milner v Staffordshire Congregational Union (Incorporated)** [1956] 1 494, ChD.

Implied condition—

Notice of requisition order served pending completion—Possession not taken by government before actual completion—Incumbrance. **Re Winslow Hall Estates Co and United Glass Bottle Manufacturers Ltd's Contract** [1941] 3 124, ChD.

Indemnification of vendor against tenant's claim—

Option to renew conferred by underlease—Option not registered as estate contract—Contract to sell reversion incorporating condition that purchaser should indemnify vendor against claims by tenant—Assignment of reversion—Notice by tenant exercising option—Refusal by purchaser to grant new lease—Whether original lessors entitled to indemnity from purchaser against claim by tenant for breach of covenant to renew—National Conditions of Sale (17th Edn), condition 18(3). **Eagon v Dent** [1965] 3 334, Ch Ct, County Palatine of Lancaster.

Misleading condition—

Land charged with annuity—Time for answer to requisition—Waiver—Law Society's General Conditions of Sale, cl 9(4), 31. **Re Ossemsley Estates Ltd** [1937] 3 774, CA.

Planning permission to be obtained—

Contract 'conditional upon planning consent being granted for use ... as a hotel'—Planning consent granted subject to conditions requiring provision of adequate visibility splay and 'No Entry' sign—Consent relating only to town planning legislation. **Richard West and Partners (Inverness) Ltd v Dick** [1969] 1 943, CA.

Deposit paid and balance payable on completion—Outline planning permission given—Detailed plans rejected—Rescission of contract by purchasers—Whether planning permission in contract meant outline permission—Whether reasonable steps taken by purchasers to get approval of detailed plans. **Hargreaves Transport Ltd v Lynch** [1969] 1 455, CA.

Reasonable time for satisfying condition—

Agreement subject to planning permission and approval of title—No provision as to time for satisfying conditions—Planning permission not obtained more than three years after agreement—Condition to be satisfied within reasonable time—Time must be reasonable as at date of contract and reasonable to both parties. **Re Longlands Farm** [1968] 3 552, ChD.

Time for performance—

Purchase conditional on vendor's obtaining renewal of leases—Recovery of deposit. **Aberfoyle Plantations Ltd v Cheng** [1959] 3 910, PC.

Waiver of condition—

Condition for benefit of one party—Waiver by that party—Right to waive condition only where by its terms or by necessary implication exclusively for benefit of party waiving it—Purchaser intending to develop site—Contract for sale of site conditional on purchaser obtaining planning consent within specified period—Purchaser failing to obtain planning consent—Whether purchaser entitled to waive condition and enforce contract. **Heron Garage Properties Ltd v Moss** [1974] 1 421, ChD.

Consent—

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Agreement to purchase 'subject to formal contract to be prepared by the vendor's solicitors if the vendor shall so require'—Whether agreement enforceable. **Riley v Troll** [1953] 1 966, Assizes.

Agreement to discharge debt—

Conditional on transfer of land by debtor to creditor—Whether a contract for sale of land—Law of Property Act 1925, s 205(1)(xxiv). **Simpson v Connolly** [1953] 2 474, QBD.

Agent authorised to make contract—

Registration as land charge. *See* Land charge (Estate contract—Contract appointing and authorising agent to make contract for sale of land).

Breach—

Damages—Mitigation. *See* Damages (Mitigation of loss—Sale of land).

Waiver of breach. *See* Contract (Breach—Waiver—Conduct amounting to waiver—Contract for sale of residue of lease).

Conditional contract—

Promissory note—Promise to pay sum of money on certain date or in default to convey certain land to promisee—Promise for 'value received'—Whether relationship of vendor and purchaser established—Whether relationship of vendor and purchaser established—Whether ascertainable price or consideration to support contract. **Savage v Uwechia** [1961] 1 830, PC.

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Formation—

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Change of circumstances. *See* **Contract** (Frustration—Change of circumstances—Sale of land).

Memorandum—

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Mistake—

Existence of mistake at date of contract—Building sold for development. *See* **Contract** (Mistake—Common mistake—Existence of mistake at date of contract—Building sold for development).

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Relief against penalty. *See* **Equity** (Penalty—Relief against penalty—Contract for sale of land).

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Waiver of breach. *See* **Contract (Breach—Waiver—Conduct amounting to waiver—Contract for sale of residue of lease).**

Conveyance—

Boundary. *See* **Boundary (Conveyance).**

Construction—

Conduct of parties—Contemporanea expositio—Applicability of doctrine—Boundaries and parcels—Application of doctrine to determine boundaries of parcels included in conveyance—Way crossing land conveyed—Way not expressly included in conveyance—Parties treating way as part of land conveyed—Period of limitation not expired—Whether conduct of parties reason for construing conveyance so as to include way. **St Edmundsbury and Ipswich Diocesan Board of Finance v Clark** (No 2) [1973] 3 902, ChD.

Evidence of circumstances surrounding conveyance—Admissibility as an aid to construction—Admissibility to contradict plain words of conveyance—Dwelling-house—Meaning—Conveyance of 'All that dwellinghouse and premises'—Cellar or space under ground floor of house conveyed—Cellar connected by steps to adjoining house retained by vendor—No access to cellar from house conveyed—Whether 'dwellinghouse' apt to include inaccessible space under ground floor of house—Whether evidence of observable facts on ground admissible to show that cellar excepted from conveyance. **Grigsby v Melville** [1973] 3 455, CA.

Rights of pasture—Reference to particulars at auction sale—Words in conveyance referring to equitable rights. **White v Taylor** (No 2) [1968] 1 1015, ChD.

Escrow—

Delivery of conveyance as escrow—Implied condition. *See* **Deed** (Escrow—Condition—Implied condition—Conveyance executed in anticipation of sale).

Exception and reservation—

Implied exception—General words of exception and reservation—Exception from conveyance of part of underlying structure of premises conveyed—Adjoining shop and cottage premises in common ownership—Cellar under cottage premises—Access to cellar only from shop—Sale of cottage—Conveyance excepting and reserving 'such rights and easements...as may be enjoyed in connection with' shop—Whether cellar excepted from conveyance—Whether fee simple in cellar reserved to vendor. **Grigsby v Melville** [1973] 1 385, ChD.

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Erections—Greenhouses resting on concrete—Law of Property Act 1925, s 62(1). **H E Dibble Ltd (Trading as Mill Lane Nurseries) v Moore** [1969] 3 1465, CA.

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Building plots—Boundary between two plots not stated—Subsequent conveyances with similar parcels—Boundary deemed straight—Building operations on one plot before ultimate conveyances of other plot—Building encroached—Effect of ultimate conveyance of plot encroached on. **Hopgood v Brown** [1955] 1 550, CA.

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Right of purchaser to insist on plan—Draft conveyance identifying property by reference to plan to be annexed—Whether identification by reference to certain number in certain street sufficient. **Re Sharman and Meade's Contract** [1936] 2 1547, ChD.

Substratum—Inclusion—Parcels defined by reference to boundaries on surface—Parcels including substratum to centre of earth in absence of words to contrary—Conveyance of 'All that dwellinghouse and premises'—Cellar or space under ground floor of house conveyed—Cellar connected by steps to adjoining house retained by vendor—No access to cellar from house conveyed—Whether conveyed—Whether conveyance effective to include cellar in parcels of property conveyed. **Grigsby v Melville** [1973] 3 455, CA.

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Damages for breach of contract—

Claim for rescission and damages for breach of contract—

Order for rescission and enquiry as to damages—Plaintiff not entitled to more than nominal damages where contract rescinded—Plaintiff entitled to payment of such sums as would restore him to position in which he would have been if contract had not been made—Reference in order to 'damages' to be construed accordingly. **Horsler v Zorro** [1975] 1 584, ChD.

Damages in addition to specific performance and abatement of purchase price—

Date for assessment of damages—Contract for sale of land free from incumbrances—Land subject to mortgages—Cost of redeeming mortgages exceeding purchase price—Purchaser entitled to conveyance of property subject to mortgages—Compensation for cost of redeeming mortgages—Abatement of purchase price—Damages in respect of excess of cost of redeeming mortgages over purchase price—Damages limited to amount by which value of property exceeding purchase price—Date for assessing value of property—Date of breach or date of completion—Appreciation in value of property—Chancery Amendment Act 1858, s 2. **Grant v Dawkins** [1973] 3 897, ChD.

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Damages for loss of bargain—Date for assessment—Date of breach or date of hearing of action for specific performance—Increase in value of property between date of breach and date of hearing—Chancery Amendment Act 1858, s 2. **Wroth v Tyler** [1973] 1 897, ChD.

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Defect in vendor's title—Vendor unable without any fault to show good title—Nominal damages for loss of bargain—Defect in title—Wife's right to occupy matrimonial home—Wife entering in charges register a notice of right of occupation after exchange of contracts—Vendor unable to persuade wife to remove notice—Vendor withdrawing from contract—Whether purchaser limited to nominal damages for loss of bargain. **Wroth v Tyler** [1973] 1 897, ChD.

Misrepresentation—

Title of vendor—Representation by vendor that he has title to sell—Representation false—Vendor having no reasonable grounds for believing representation to be true—Claim by purchaser for damages for loss of bargain—Whether in absence of fraud purchaser limited to damages measured by expenses incurred in consequence of misrepresentation—Misrepresentation Act 1967, s 2(1). **Watts v Spence** [1975] 2 528, ChD.

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Costs incurred by purchaser prior to execution of contract—Performance of act required to be done by contract—Improvements effected to property by purchaser prior to completion—What costs recoverable. **Lloyd v Stanbury** [1971] 2 267, ChD.

Intention of purchaser to convert property—Purchaser a dealer in real estate—Whether knowledge of those matters to be imputed to vendor. **Diamond v Campbell-Jones** [1960] 1 583, ChD.

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Information given by vendor before sale—Estimated income from estate inaccurate—

Absence of fraud—Reliance on information by purchaser—Whether purchaser entitled to damages for breach of warranty. **Terrene Ltd v Nelson** [1937] 3 739, ChD.

Newly constructed house—Builder vendor of house—Purchaser informing vendor that she desired to be assured house well built—Assurance given—Sale completed—Fall of ceiling—Whether vendor liable to purchaser for breach of warranty. **M Otto and E Otto v Bolton and Norris** [1936] 1 960, KBD.

Reply to preliminary enquiry—Reply affirming that property had not suffered war damage—

Reply untrue—Reply confirmed in answer to requisitions on title—Whether vendor liable for breach of warranty. **Mahon v Ainscough** [1952] 1 337, CA.

Reply to preliminary enquiry—Representation as to promptitude of payment of rents—Representation untrue but not fraudulent—Whether a breach of warranty. **London County Freehold and Leasehold Properties Ltd v Berkeley Property and Investment Co Ltd** [1936] 2 1039, CA.

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Condition precedent—

Failure to pay deposit—Provision for payment of deposit by purchaser on or before signing of contract—Purchaser delivering cheque to vendor on signing of contract—Cheque subsequently dishonoured—Whether payment of deposit condition precedent to contract taking effect—Whether vendor bound by contract. **Myton Ltd v Schwab-Morris** [1974] 1 326, ChD.

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Purchaser failing to complete—Vendor electing to rescind—Whether also entitled to payment of outstanding part of deposit. **Lowe v Hope** [1969] 3 605, ChD.

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Parts exchanged required to be in identical terms—Agreement to vary draft contract by altering amount of deposit payable—Purchaser's part amended—Vendor's part by mistake not amended—Exchange of parts not resulting in concluded contract. **Harrison v Battye** [1974] 3 830, CA.

Constructive exchange—

Purchaser's part returned by vendor to purchasers in mistake for vendor's part—Whether binding contract created. **Harrison v Battye** [1974] 3 830, CA.

Duplicate contracts—

Need of actual physical exchange—Ordinary method by which contract brought into existence—Contract not binding until signed parts of contracts exchanged. **Eccles v Bryant** [1947] 2 865, CA.

Necessity for exchange—

Concluded contract before exchange—Intention of parties—Offer by council by letter to sell council house to sitting tenant—Form of agreement for sale enclosed with letter—Agreement devised with object of dispensing with legal formalities—Agreement signed by tenant and returned to council—Date when tenancy ceased and mortgage repayments began left blank on agreement—Contract concluded by offer and acceptance—Contract binding on council though not signed by them and contracts not exchanged—Letter containing offer constituting sufficient note or memorandum of contract. **Storer v Manchester City Council** [1974] 3 824, CA.

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Exchange unnecessary—Parties bound when complete contract signed and nothing more remains to be done. **Smith v Mansi** [1962] 3 857, CA.

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Uncommunicated reservation of vendor—Formal contract signed by both parties and handed to their solicitor with day and month of completion date left blank—Date later completed by solicitor—Time for completion alternatively provided by conditions of sale—Intention of vendor not to bind himself by signature not communicated to purchaser—Whether evidence of such intention admissible—National Conditions of Sale (17th Edn), condition 4. **Smith v Mansi** [1962] 3 857, CA.Exchange of contracts. *See* Exchange of contracts, *ante*.

Provisional agreement—

Agreement provisional 'until' formal agreement executed—Whether immediately binding. **Branca v Cobarro** [1947] 2 101, CA.

House completed at date of sale—

Implied warranty—

Fitness for habitation—Sale by builder of new house—Whether implied warranty house fit for human habitation. **Hoskins v Woodham** [1938] 1 692, KBD.

House in course of erection—

Implied warranty as to workmanship etc—

Express terms as to the way in which the house was to be completed—Whether warranty of fitness excluded by express terms. **Lynch v Thorne** [1956] 1 744, CA.Express term for completing house in proper manner—Whether warranty of fitness of materials should also be implied—Whether defective work done before contract of sale was within clause for properly completing house—Defects clause not taking away rights under warranty clause—National Conditions of Sale (16th Edn), condition 12(3). **Hancock v B W Brazier (Anerley) Ltd** [1966] 2 901, CA.Foundations of house—Cracks in walls due to settlement caused by roots of poplar trees—Whether implied warranty extending to foundations below ground. **Jennings v Tavener** [1955] 2 769, QBD.Sale of house by builder—Certain fittings not fixed and plastering still to be done—Whether sale of complete house or house in course of erection. **Perry v Sharon Development Co Ltd** [1937] 4 390, CA.Supply of good and proper materials—Whether implied warranty applicable to materials used before contract signed. **Hancock v B W Brazier (Anerley) Ltd** [1966] 2 901, CA.Implied condition. *See* Condition—Implied condition, *ante*.

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Implied covenant—

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Implied warranty—

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House in course of erection—

Warranty as to workmanship etc. *See* House in course of erection—Implied warranty as to workmanship etc, *ante*.

Interest on unpaid purchase money—

Delay through fault of vendor—

Provision that interest to be paid from date fixed for completion—Contract incorporating Law Society's General Conditions so far as not varied by agreement or inconsistent—Whether Law Society's General Conditions excluded as inconsistent—Whether purchaser liable to pay interest where delay due to vendor's default—Law Society's General Conditions of Sale (1934 Edn), cl 7. **Re Debenham and Mercer's Contract** [1944] 1 364, ChD.

Option to take income of property in lieu—

Condition entitling vendor to interest if completion delayed, except where delay attributable to default of vendor—Condition granting vendor option to take income of property instead of interest—Vendor electing to take income—Completion delayed by circumstances foreseeable by vendor, not connected with question of title—Whether delay attributable to 'default' of vendor—Whether vendor entitled to interest or to take income—National Conditions of Sale (17th Edn), condition 6. **Re Hewitt's Contract** [1963] 3 419, ChD.

Possession before completion—

Delay in completion through vendor's default in deducing title—Purchaser taking possession on date fixed for completion—Special conditions incorporating Law Society's Conditions of Sale 'so far as not varied or inconsistent'—Clause providing for payment of interest from date of taking possession omitted—Whether purchaser liable for interest from date of taking possession—Law Society's Conditions of Sale, cl 6, 7. **Re Priestley's Contract** [1947] 1 716, ChD.

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Implied covenant—Conveyance by assignors as 'beneficial owners'—Implied covenants that lease not void or voidable and that all covenants performed up to time of conveyance—Covenant to repair not performed—Condition of sale that property taken with full notice of state of repair—Liability of assignors—Rectification of lease—Law of Property Act 1925, s 76(1)(b), Sch II, Part II. **Butler v Mountview Estates Ltd** [1951] 1 693, KBD.

Consent to assignment—

Vendors' duty—Sub-lease—Consent refused by immediate landlord—Ground of refusal that assignees' user would contravene covenant in head-lease—Whether vendors under a duty to approach freeholders for a licence or to afford purchasers opportunity to do so. **Lipman's Wallpaper Ltd v Mason & Hodgkinton Ltd** [1968] 1 1123, ChD.

Contract—

Condition—Subject to landlords' consent to assignment being obtained by vendor. **Property and Bloodstock Ltd v Emerton, Bush v Property and Bloodstock Ltd** [1967] 3 321, CA.

General words implied—

Flats supplied with hot water and central heating by landlords—No covenant to supply—Whether right conferred on tenant by general words—Law of Property Act 1925, s 62. **Regis Property Co Ltd v Redman** [1956] 2 335, CA.

Option to purchase reversion—

Assignment to assignee of lease—Option in lease to purchase freehold reversion expectant on term of years granted by lease—Assignment of lease—Subsequent assignment of option to assignee of lease—Whether option enforceable by assignee. **Griffith v Pelton** [1957] 3 75, CA.

Right of re-entry—

Assignment of leasehold interest in part of premises—Covenant to perform and observe stipulations for benefit of retained premises—Right of re-entry on breach of covenant—Covenant by purchaser that successors in title would observe stipulations—Purchaser relieved from liability for non-performance of covenant after parting with interest—Covenant not directly enforceable against successor in title—Failure by successor in title to perform or observe stipulations—Whether right of re-entry effective although no one liable to be sued for breach of covenant. **Shiloh Spinners Ltd v Harding** [1973] 1 90, HL.

Sub-underlease of flat described by vendor in contract of sale as 'underlease'—

Flat comprised in head lease which included other flats in same former house—Enforceability of contract of sale. **Becker v Partridge** [1966] 2 266, CA.

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Evidence—Admissibility to prove real bargain different from that contained in document—Law of Property Act 1925, s 40(1). **Beckett v Nurse** [1948] 1 81, CA.

Circumstances in which memorandum must evidence existence of contract—

Effect of qualification 'subject to contract'—Waiver of qualification—Waiver by subsequent oral agreement—Solicitors' letters—Oral contract concluded by parties prior to solicitors' correspondence—Vendor's solicitors' letter referring to 'proposed purchase ... subject to contract'—Vendor's solicitors forwarding draft contract—Parties subsequently entering into new oral agreement based on increased purchase price—Vendor's solicitors' letter acknowledging 'increase in purchase price has been mutually agreed'—Letter not expressed to be subject to contract—Whether qualification in earlier letter waived by new oral agreement—Whether subsequent letter read with earlier correspondence and draft contract constituting a note or memorandum of new agreement—Law of Property Act 1925, s 40(1). **Law v Jones** [1973] 2 437, CA.

Company—

Minutes of company meeting sufficient memorandum—Law of Property Act 1925, s 53(1)(a). **Re Strathblaine Estates Ltd** [1948] 1 162, ChD.

Compromise of pending legal proceedings—

Applicability of requirement of note or memorandum of agreement in writing—Compromise including provision for transfer of interest in land—Compromise not evidenced in writing—Whether compromise enforceable—Law of Property Act 1925, s 40(1). **Steadman v Steadman** [1973] 3 977, CA.

Compulsory purchase—

Service of notice to treat by acquiring authority—Agreement on price to be paid by authority—Whether agreement to be evidenced by note or memorandum in writing—Law of Property Act 1925, s 40(1). **Munton v Greater London Council** [1976] 2 815, CA.

Deficiency in document signed by party to be charged—

Reference to other document—No reference in document so signed to second document or to other transaction than that effected by first document—Cheque for deposit on sale signed by purchaser and receipt for cheque prepared and signed by vendor on same occasion but subsequently to the signing of the cheque—Cheque drawn in favour of vendor's solicitors, not vendor—Whether cheque and receipt sufficient to satisfy Law of Property Act 1925, s 40. **Timmins v Moreland Street Property Co Ltd** [1957] 3 265, CA.

Deficiency in memorandum supplied by second document—

No reference in second document to memorandum—Omission of material term in alleged memorandum—Concession by plaintiff of term in favour of defendant to render contract enforceable—Law of Property Act 1925, s 40(1). **Burgess v Cox** [1950] 2 1212, ChD.

Description of parties—

Agent of purchaser contracting in own name—Knowledge of agency by vendor—Right of purchaser to maintain action for specific performance—Vendors tenants in common—One vendor having no power to convey interest—Right of purchaser to order against other vendors in respect of their shares. **Abdul Karim Basma v Weekes** [1950] 2 146, PC.

Agent of vendor contracting in own name—Agent having authority to enter into contract on behalf of vendor—Right of purchaser to maintain action for specific performance—Whether vendor sufficiently described—Law of Property Act 1925, s 40(1). **Davies v Sweet** [1962] 1 92, CA.

Vendor not named in record of contract—Condition of sale—Vendor will convey as personal representative—Whether memorandum sufficient. **Fay v Miller, Wilkins & Co** [1941] 2 18, CA.

Interest in land—

Undivided share—Joint ownership of freehold premises—Sale by one co-owner to the other—Whether a sale of an 'interest in land'—Law of Property Act 1925, s 40(1). **Cooper v Critchley** [1955] 1 520, CA.

Memorandum as evidence of existence of contract—

Effect of qualification 'subject to contract'—Effect of letter setting out terms of contract but not recognising existence of contract—Oral agreement for purchase of property—Letter from purchaser's solicitor referring to 'proposed sale ... subject to contract' and requesting draft contract—Letter from vendor's solicitors acknowledging letter and enclosing draft contract for approval—Whether letter enclosing draft contract a sufficient memorandum of contract—Law of Property Act 1925, s 40(1). **Tiverton Estates Ltd v Wearwell Ltd** [1974] 1 209, CA.

Omission of material term from memorandum—

Balance of purchase money 'to be paid immediately on possession'—When possession to be given not stated—Verbal agreement that possession should be given only when vendor had found other accommodation—Insufficiency of memorandum—No enforceable contract—Law of Property Act 1925, s 40. **Johnson v Humphrey** [1946] 1 460, ChD.

Purchaser seeking to enforce contract—Receipt for deposit signed by vendor—Receipt omitting term that purchaser would pay half defendant's costs of sale—Purchaser's submission to performance of missing term—Whether purchaser entitled to specific performance—Law of Property Act 1925, s 40(1). **Scott v Bradley** [1971] 1 583, ChD.

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Memorandum of contract (cont)—

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Term exclusively for benefit of one party—Right to waive and proceed on agreement as evidenced by memorandum—Term specifying date of vacant possession—Law of Property Act 1925, s 40(1). **Hawkins v Price** [1947] 1 689, ChD.

Term orally agreed—Letter of solicitors acting for both parties stating the material term and note of confirmation by client by telephone—Whether documents sufficient memorandum—Authority of solicitor—Law of Property Act 1925, s 40(1). **Gavaghan v Edwards** [1961] 2 477, CA.

Signature of party to be charged—

Alteration to memorandum after signature—Memorandum not signed again following alteration—Alteration modifying terms of agreement—Modification agreed to by parties—Party to be charged not signing memorandum afresh or expressly reviving existing signature by appropriate words or gestures—Whether agreement enforceable—Law of Property Act 1925, s 40(1). **New Hart Builders Ltd v Brindley** [1975] 1 1007, ChD.

Auctioneer's signature—Incorporation of conditions of sale in memorandum—Memorandum containing receipt for deposit—Memorandum signed by auctioneer and purchaser before payment of deposit—Authority of auctioneer to sign memorandum irrevocable—Law of Property Act 1925, s 40. **Phillips v Butler** [1945] 2 258, ChD.

Sale by public auction—Agreement signed only by purchaser—Vendor's name and initials inserted at head of agreement by auctioneer before auction—Admissibility of evidence of intention of parties that document should be final written record of contract—Law of Property Act 1925, s 40(1). **Leeman v Stocks** [1951] 1 1043, ChD.

Sufficient memorandum—

Contents of memorandum—Material terms—Purchase price—Payment by instalments—Memorandum recording existence of agreement and amount of purchase price—Memorandum omitting term that payment of price to be by instalments—Whether material term of agreement—Whether sufficient memorandum—Law of Property Act 1925, s 40(1). **Tweddell v Henderson** [1975] 2 1096, ChD.

Two documents—

Letter by purchaser's solicitors—Terms of agreement 'subject to contract'—Amendment to make offer unconditional—Letter of acceptance by vendor's solicitors—Letter incorporated reference to letter by vendor's solicitors—Whether letters sufficient memorandum of agreement—Effect of 'subject to contract'—Law of Property Act 1925, s 40(1). **Griffiths v Young** [1970] 3 601, CA.

Merger of contract in conveyance—

Registered land—

Transfer—No document which is conveyance—Whether doctrine of merger applicable to transfer of registered land. **Knight Sugar Co Ltd v Alberta Ry and Irrigation Co** [1938] 1 266, PC.

Misdescription—

Freehold decontrolled properties—

Small part controlled—Recovery of deposit—Increase of Rent and Mortgage Interest (Restrictions) Act 1920, s 12(2)(i)—Rent and Mortgage Interest Restrictions Act 1923, s 10. **Ridley v Oster** [1939] 1 618, KBD.

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Misrepresentation—

Damages—

Concealment of incumbrance—Fraud—Need to prove intention to defraud—Law of Property Act 1925, s 183(2). **District Bank Ltd v Luigi Grill Ltd** [1943] 1 136, ChD.

Damages. *See* Damages for breach of contract—Misrepresentation, *ante*.

Damages—

Generally. *See* Damages for breach of contract—Misrepresentation, *ante*.

Fraudulent misrepresentation—

Dimensions of garden. *See* Misrepresentation (Fraudulent misrepresentation—Dimensions of garden).

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Sale. *See* Mortgage (Sale).

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Notice—

Tenant in occupation—

Purchaser bound by equities tenant can enforce against vendor—Applicability to equity for rectification—No constructive notice of equity for rectification of tenancy agreement—Law of Property Act 1925, s 199(1)(ii)(a). **Smith v Jones** [1954] 2 823, ChD.

Notice of actual state and condition of property—

Building work—

House in course of erection—Provision that purchaser takes written notice of state and condition applicable only in regard to obligation as to conveyance of land—Inapplicable to building work of new house—National Conditions of Sale (16th Edn), condition 12(3). **Hancock v B W Brazier (Anerley) Ltd** [1966] 2 901, CA.

Notice to complete—

Failure of purchaser to complete on date fixed for completion—

Power of vendor to resell after notice—Rights of vendor conditional on giving notice—Whether failure of purchaser to complete capable of amounting to fundamental breach entitling vendor to rescind contract—The Statutory Form of Conditions of Sale 1925 (S R & O 1925 No 779), condition 9. **Rightside Properties Ltd v Gray** [1974] 2 1169, ChD.

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Notice to complete (cont)—

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Condition empowering either party to serve notice to complete on or after completion date—Notice to require completion 'in conformity with this condition'—Failure to complete within period specified in notice a breach of contract—Letter from purchasers to vendors—Request that letter be treated as 'Notice to Complete the contract in accordance with its terms'—Vendors failing to complete within prescribed time—Terms of contract not making time of essence—Whether letter an effective notice to complete—National Conditions of Sale (18th Edn), condition 22. **Babacomp Ltd v Rightside Properties Ltd** [1974] 1 142, CA.

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Firms whose business consisted in buying steel sheets which they cut into various shapes according to requirements of customers—Whether businesses fell within Ord III to Ord XVI of Standard Industrial Classification—Selective Employment Payments Act 1966, s 1(2)(a). **Minister of Labour v Genner Iron & Steel Co (Wollescote) Ltd** [1967] 3 278, QBD.

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Refrigeration of plant—Employers' main business activity was to plan cooling installations for abattoirs, supermarkets, hospitals, etc, and to install cooling equipment—Employers manufactured the coolers, but obtained other components from other manufacturers—Whether their main activity constituted manufacturing of refrigerators, etc within heading 339.3 and Ord VI of the Standard Industrial Classification—Whether employers' establishment satisfied Selective Employment Payments Act 1966, s 1(2)(a)(i). **Prestcold (Central) Ltd v Minister of Labour** [1969] 1 69, CA.

Repair of washing machines—Repair by manufacturers from after-sales establishments—Standard Industrial Classification—Whether repair properly classified under heading 820 (5), heading 349(3) or heading 365—Selective Employment Payments Act 1966, s 1(2). **Fisher-Bendix Ltd v Secretary of State for Employment and Productivity** [1970] 2 286, CA.

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Breach of probation order—

Matters to be before court—Probation order together with statement of breach in respect of which charge brought to be before court. **R v Maber** [1954] 1 666, CCA.

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Conviction by court of summary jurisdiction of hybrid offence—Committal to quarter sessions for sentence—Committal a nullity—Right of offender to appeal against sentence—Magistrates' Courts Act 1952, ss 18(1), 29. **R v Jones (Gwyn)** [1969] 1 325, CA.

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Order as to costs—Accused convicted on indictment—Accused ordered to contribute to prosecution costs—Whether order a 'sentence'—Whether right of appeal against order—Criminal Appeal Act 1968, ss 9, 50(1)—Costs in Criminal Cases Act 1973, s 4(1). **R v Hayden** [1975] 2 558, CA.

Penal or other sum—Defendant acquitted—Order that defendant pay costs—Right of appeal—Order for payment of 'penal or other sum'—Whether defendant entitled to appeal—Summary Jurisdiction and Criminal Justice Act (Northern Ireland) 1935, s 24(1). **Benson v Northern Ireland Road Transport Board** [1942] 1 465, HL.

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Right of appeal against order—Whether offender against whom order made having right of appeal—Criminal Justice Act 1948, s 12(1). **R v Tucker** [1974] 2 639, CA.

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Sentence not one which court of summary jurisdiction had power to impose—Order to return to borstal institution—Offender sentenced to borstal training in Scotland—Released on licence—Conviction in England while on licence—Committal to quarter sessions with a view to borstal training—Order by quarter sessions that he be returned to borstal institution—Whether order lawful and one which quarter sessions had power to impose—Whether right of appeal to Court of Appeal—Criminal Justice Act 1948, s 29(3)(d)—Criminal Justice Act 1961, ss 12(1), 38(2)(a). **R v Welsh** [1967] 3 846, CA.

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Right of appeal—No appeal against sentence of life imprisonment fixed by law—Criminal Appeal Act 1907, s 3—Homicide Act 1957, s 9(1). **Practice Note** [1957] 2 378, CCA.

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Recognisance estreated and in default of payment further six months' imprisonment—Appeal against further six months' imprisonment—Order made 'on' conviction—Criminal Appeal Act 1907, ss 3(c), 21. **R v Harman** [1959] 2 738, CCA.

Recognisance estreated and in default of payment further six months' imprisonment—Order not made for the offence—Criminal Appeal Act 1968, s 9. **R v Thayne** [1969] 3 652, CA.

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Allowance for period in custody pending appeal—Practice—Criminal Justice Act 1967, s 67(1). **Practice Note** [1970] 1 273, CA.

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Nature of breach to be stated—Opportunity to be given to accused to call evidence—Procedure. **R v McGregor** [1945] 2 180, CCA.

Right to appeal—Appeal on ground recognisance to be of good behaviour not broken. **R v Green** [1958] 1 471, CCA.

Trial by jury—Conviction for libel—Undertaking not to repeat libel—Breach of undertaking—Whether right to trial by jury—Crown Office Rules 1906, rr 115, 167. **R v David** [1939] 1 782, CCA.

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Condition of recognisance—

Irish offender—power of court to bind over and make offender's return to Ireland a condition of the recognisance. **R v McCartan** [1958] 3 140, CCA.

Return to country abroad—Whether jurisdiction to make return to country abroad a condition of recognisance. **R v Ayu** [1958] 3 636, CCA.

SENTENCE (cont)**Binding-over (cont)—****Enforcement of civil debt—**

Validity—Charge of embezzling £5—Admission of defalcations amounting to £70—Accused bound over or undertaking to repay £70 by instalments. **R v Peel** [1943] 2 99, CCA.

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Not more than 23 years of age—Prisoner sentenced on twenty-third birthday—Criminal Justice Administration Act 1914, s 10(1)(a)—Criminal Justice Act 1925, s 46(1)—Borstal (Extension of Age) Order 1936 (S R & O 1936 No 839). **R v Clifford** [1939] 1 352, CCA.

Suspended sentence—Conviction and sentence for subsequent offence—Activation of suspended sentence ordered consecutively—Total period within prohibited range—Validity of sentence—Criminal Justice Act 1961, s 3. **R v Pike** [1971] 2 1470, CA.

Suspended sentence—Conviction and sentence for subsequent offence—Sentence of 12 months imposed—Sentence within prohibited range—Suspended sentence to run consecutively—Whether sentence for substantive offence permissible provided overall term of imprisonment outside prohibited range—Criminal Justice Act 1961, s 3. **R v Halse** [1971] 3 1149, CA.

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Further offences—

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Obtaining credit by fraud—

Committal of offender to quarter sessions with view to borstal training—Maximum sentence for offence twelve months—Whether sentence of borstal training may be imposed—Debtors Act 1869, s 13(1)—Criminal Justice Act 1948, s 20(5)—Magistrates' Courts Act 1952, s 28. **R v Amos** [1961] 1 191, CCA.

Offence meriting term of imprisonment of more than six months but less than three years—

Sentence of three years' imprisonment—Borstal training substituted since appropriate sentence two years—Criminal Justice Act 1961, s 3(1). **R v Lowe** [1964] 2 116, CCA.

Offences committed by young offender while on probation—

Sentenced to detention in detention centre—Brought back to quarter sessions and sentenced to borstal training—Whether sentence of borstal training should be passed on young offender who was undergoing detention in detention centre. **R v Bingham** [1968] 3 834, CA.

Offender qualifying for sentence of borstal training—

Offender not suitable for borstal training—Sentence of three years' imprisonment in order to avoid borstal training—Criminal Justice Act 1961, s 3(1). **R v Gillespie** [1974] 1 113, CA.

Prison Commissioners' report—

Copy to be given to offender—Proof—Criminal Justice Act 1948, ss 20(8), 21(5). **Practice Note** [1959] 2 734, CCA.

Prisoner sentenced to borstal training in Scotland and released on licence—

Conviction in England while on licence—Power of quarter sessions to order his return to borstal institution—Appeal—Criminal Justice Act 1961, s 12(1), s 38(2)(a)—Criminal Justice Act 1948, s 29(3)(d)(as amended). **R v Welsh** [1967] 3 846, CA.

Suitability of case—

Report of Prison Commissioners—Reasons—Prevention of Crime Act 1908, s 1(1). **R v Naylor** [1937] 2 379, CCA.

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Breach of probation—Committal of offender to quarter sessions with view to borstal training—Maximum sentence for offence three months—Whether sentence of borstal training could be imposed—Vagrancy Act 1824, s 4—Magistrates' Courts Act 1952, s 28. **R v James** [1960] 2 863, CCA.

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Prisoner's only previous conviction dealt with by probation order—Whether sentence appropriate—Criminal Justice Administration Act 1914, s 10(1). **R v Biller** [1939] 1 501, CCA.

Youthful offender absconding after sentence of borstal training—

Further offence committed while at large—Sentence of 15 months' imprisonment—Previous sentence of borstal training not served—Sentence of borstal training substituted—Criminal Justice Act 1961, s 3(3). **R v Hughes** [1968] 2 53, CA.

SENTENCE (cont)

Breach of probation order—

Compensation order and probation order made by magistrates' court—

Offender committed by another magistrates' court to quarter sessions for sentence on original offence—Sentence of imprisonment imposed—Whether compensation order ceases to have effect with cessation of probation order—Circumstances at date of sentencing to be regarded in assessing sentence—Criminal Justice Act 1948, s 5(4), s 6, s 11(2)—Magistrates' Courts Act 1952, s 29. **R v Evans** [1961] 1 313, CCA.

Concurrent orders—

Two probation orders imposed by different courts current at the same time—Subsequent offence—Whether first probation order remained effective to enable punishment to be imposed for the original offence—Criminal Justice Act 1948, s 3(5). **R v Keeley** [1960] 2 415, CCA.

Consecutive or concurrent sentence—

Sentence for original offence should generally be consecutive and more than nominal—If borstal training ordered for substantive offence sentence of imprisonment for original offence should be concurrent—Criminal Justice Act 1948, s 8(5)(6). **R v Stuart** [1964] 3 672, CCA.

Conviction liable to be quashed—

Invalid sentence imposed—Whether conviction for which invalid sentence imposed may be used to show failure to comply with requirement of probation order—Criminal Justice Act 1948, ss 6(4)(b)(6), 8(5). **R v Green** [1958] 1 471, CCA.

Conviction of other offence—

Consideration to be given to sentencing for original offence—Criminal Justice Act 1948, s 12(1). **R v Calvert** [1962] 3 1028, CCA.

Fresh probation order—

Fresh order only to be made after proper reflection by court. **R v Thompson** [1969] 1 60, CA.

Matters to be put to prisoner—

Certificate of magistrates—Case committed by magistrates' court to quarter sessions—Certificate by magistrate of probationer's failure to comply with probation order—Certificate admissible but not conclusive evidence—Criminal Justice Act 1948, s 6(4). **R v Chapman and Pidgley** [1960] 1 452, QBD.

Prisoner to be asked whether facts alleged to constitute breach admitted. **R v Devine** [1956] 1 548, CCA, **R v Holmes** [1966] 1 87, CCA.

Matters to be taken into account—

Circumstances at date of sentencing to be considered—Sentence not to be based on circumstances existing at date of conviction—Criminal Justice Act 1948, s 6(3), (4). **R v Evans** [1961] 1 313, CCA.

Sentence should be passed for original offence but breach should not be taken into account with other offences. **R v Webb** [1953] 1 1156, CCA.

Procedure—

Admission of breach. **R v Long** [1959] 3 559, CCA.

Sentence for original offence—

Sentence of one day's imprisonment instead of fine—Sentence of borstal detention for original offence—Validity—Criminal Justice Administration Act 1914, s 10(1)—Criminal Justice Act 1925, s 7(4). **R v Ball** [1947] 1 818, CCA.

Capital punishment—

Rhodesia. *See* **Southern Rhodesia** (Criminal law—Punishment).

Causing death by dangerous driving. *See* **Road traffic** (Sentence—Dangerous driving—Causing death by dangerous driving).

Commencement—

Crown Court. *See* **Crown Court** (Sentence—Commencement).

Committal for sentence—

Crown Court. *See* **Crown Court** (Committal of offender to Crown Court for sentence).

Magistrates. *See* **Magistrates** (Committal for sentence).

Quarter sessions. *See* **Quarter sessions** (Committal of offender to quarter sessions for sentence).

Common law offence—

Attempt—

Duration of imprisonment—Sentence not to exceed that imposable for full offence—Road Traffic Act 1930, s 28(1)(b)—Criminal Justice Act 1948, s 21(1)(a). **R v Pearce** [1952] 2 718, CCA.

Duration of imprisonment—Term should not exceed maximum that may be awarded for completed offence. **Verrier v Director of Public Prosecutions** [1966] 2 568, HL.

Imprisonment for longer than two years. **R v Higgins** [1951] 2 758, CCA.

Conspiracy—

Duration—Conspiracy to commit a statutory offence—Whether sentence limited to maximum period that could be imposed for the substantive offence. **Verrier v Director of Public Prosecutions** [1966] 3 568, HL.

Period longer than maximum for substantive offence—Circumstances in which sentence may exceed maximum for substantive offence. **R v Morris** [1950] 2 965, CCA.

Limit on sentence for common law misdemeanour—

Sentence of imprisonment for longer than two years. **R v Morris** [1950] 2 965, CCA.

Company director—

Disqualification—

Fraudulent trading and fraudulent conversion when director—Sentence of imprisonment and disqualification for being a director for five years—Date from which disqualification should run—Companies Act 1948, s 188. **R v Bradley** [1961] 1 669, CCA.

SENTENCE (cont)

Compensation—

Loss or damage resulting from offence—

Costs incurred in civil proceedings against accused—Civil proceedings taken by victim in respect of matters constituting offence—Victim not recovering costs of civil proceedings—Whether victim entitled to compensation in respect of costs following conviction of accused—Criminal Justice Act 1972, s 1(1). **Hammertons Cars Ltd v London Borough of Redbridge** [1974] 2 216, QBD.

Means and prospect of rehabilitation—

Irrelevant—Forfeiture Act 1870, s 4 (as amended). **R v Ironfield** [1971] 1 202, CA.

Relevance—No order to be made where liable to be self-defeating—Circumstances in which order liable to be self-defeating—Offender unlikely to have sufficient means to comply with order—Temptation to resort to crime in order to make necessary payment—Criminal Justice Act 1972, s 1(1)(4). **R v Oddy** [1974] 2 666, CA.

Means of convicted person—

Regard to be had to means in determining whether to make order—Order to be made only in simple cases—Order involving weekly payment over period of years not appropriate—Criminal Justice Act 1972, s 1(1)(4). **R v Daly** [1974] 1 290, CA.

Order—

Form of order—Criminal Justice Act 1972, s 1(1). **R v Oddy** [1974] 2 666, CA.

Indictable offence—No application by person aggrieved—Validity of order—Magistrates' court—Forfeiture Act 1870, s 4, as amended. **R v Forest Justices, ex parte Coppin** [1969] 2 668, QBD.

Indictable offence—No application by person aggrieved—Validity of order—Quarter sessions—Forfeiture Act 1870, s 4 (as amended). **R v Taylor** [1969] 2 662, CA.

Joint and several order—Power to make joint and several order against joint offenders—Circumstances in which power should be exercised—Criminal Justice Act 1972, s 1(1). **R v Grundy** [1974] 1 292, CA.

Order made on conviction—Whether compensation order a sentence—Whether justices entitled to impose compensation order and commit offender with a view to borstal training **R v Dorset Quarter Sessions, ex parte Randall** [1966] 3 952, QBD.

Parent or guardian's liability—

Local authority as guardian—Young person placed in care of local authority pursuant to care order—Local authority allowing young person to be under charge and control of parents—Young person committing offences while residing with parents—Whether local authority having 'charge of or control over' young person when offences committed—Children and Young Persons Act 1933, s 55(1) (as amended by the Children and Young Persons Act 1969, s 72(3), Sch 5, para 5, and the Criminal Justice Act 1972, s 64(1), Sch 5), s 107(1)—Children Act 1948, s 13(2) (as substituted by the Children and Young Persons Act 1969, s 49). **Lincoln Corporation v Parker** [1974] 2 949, QBD.

Local authority as guardian—Young person placed in care of local authority pursuant to care order—Local authority placing young person in community home—Community home not controlled by local authority—Young person absconding from community home and committing offence—Compensation order against local authority—Whether local authority 'guardian' of young person—Children and Young Persons Act 1933, ss 55 (as amended by the Criminal Justice Act 1972, s 64(1), Sch 5), 107. **Somerset County Council v Brice** [1974] 3 438, QBD.

Local authority as guardian—Young person placed in care of local authority pursuant to care order—Local authority allowing young person to be under charge and control of parent—Young person committing offences while residing with parent—Whether local authority having 'charge of or control over' young person when offences committed—Children and Young Persons Act 1933, s 55(1) (as amended by the Children and Young Persons Act 1969, s 72(3), Sch 5, para 5, and the Powers of Criminal Courts Act 1973, s 56(1), Sch 5, para 1), s 107(1)—Children Act 1948, s 13(2) (as substituted by the Children and Young Persons Act 1969, s 49). **Leicestershire County Council v Cross** [1976] 2 491, QBD.

Neglect of control—Parent or guardian conducting to commission of offence by neglecting to exercise due care or control over child or young person—Local authority guardian of child—Test for determining whether local authority guilty of neglect conducting to commission of offence—Child placed in care of local authority pursuant to care order—Authority placing child in community home—Home not a secure penal institution—Purpose of home to rehabilitate children—Child absconding from home and committing offence—Whether authority having conducted to commission of offence by neglecting to exercise due care or control of child—Children and Young Persons Act 1933, s 55 (as amended by the Criminal Justice Act 1972, s 64(1), Sch 5). **Somerset County Council v Kingscott** [1975] 1 326, QBD.

Stolen goods—

Not recovered—Plea of guilty to burglary—Indictment specifying items stolen—Most items recovered—Accused subsequently denying that remaining items stolen—No application for compensation order—Whether court should make compensation order in respect of unrecovered items—Criminal Justice Act 1972, s 1(1). **R v Kneeshaw** [1974] 1 896, CA.

Recovered—Goods in respect of which accused convicted all recovered—Order made in respect of other goods not subject of charge—Annulment of order—Theft Act 1968, s 28(1)—Criminal Appeal Act 1968, s 30(4). **R v Parker** [1970] 2 458, CA.

SENTENCE (cont)

Concurrent or consecutive sentences—

Further convictions—

Bad record of accused—Second conviction for similar offence as first conviction—Bad record taken into account on both convictions—Whether subsequent sentence should be concurrent with or consecutive to first. **R v Ames, R v Carey** [1938] 1 515, CCA.

Concurrent sentences—

Convictions on two counts arising out of the same facts and involving same criminality—

Consecutive sentences not appropriate. **R v Torr** [1966] 1 178, CCA.

Conditional discharge—

Breach of condition—

Not to be taken into consideration on subsequent conviction—Sentence to be passed for original offence. **R v Webb** [1953] 1 1156, CCA.

Sentence of borstal training for first offence—Need for nominal sentence in respect of breach of condition. **R v Fry** [1955] 1 21, CCA.

Fine imposed—

Order of conditional discharge not to be made if fine also imposed—Criminal Justice Act 1948, s 7(1), s 13. **R v McClelland** [1951] 1 557, CCA.

Consecutive sentences—

Discretion to impose—

Maximum sentences for like offences—Whether maximum sentences imposed on several convictions each for a separate like offence can be directed to run consecutively—Official Secrets Act 1911, s 1(1)(c)—Official Secrets Act 1920, s 8(1). **R v Blake** [1961] 3 125, CCA.

Further sentence—

Form of further sentence where prisoner already subject to consecutive sentences—Note whether prisoner subject to consecutive sentences to be added to list of previous convictions. **Practice Note** [1959] 2 144, CCA.

Hard labour—

Consecutive sentences of imprisonment with hard labour amounting to three years—Penal servitude for three years substituted—Penal Servitude Act 1926, s 1. **R v Darry** [1945] 2 454, CCA.

Life imprisonment—

Consecutive to term being served—Whether sentence of life imprisonment to run consecutively with sentence of imprisonment then being served permissible and desirable. **Jones v Director of Public Prosecutions** [1962] 1 569, HL.

Subsequent sentence of imprisonment to run consecutively—Subsequent sentence invalid. **R v Foy** [1962] 2 246, CCA.

Prison sentence made consecutive to existing detention centre sentence—

Wrong in principle—Sentence should be concurrent with detention so that accused goes straight to prison. **R v Raisis** [1969] 3 455, CA.

Proportion of sentence—

Separate indictment—Undesirability of proportion of sentence on one indictment being made to run consecutively to sentence imposed on second indictment. **R v Gregory and Mills** [1969] 2 174, CA.

Series of offences—

Separate and distinct offences—Spying—Whether sentences to run concurrently—Official Secrets Act 1911, s 1(1)(c)—Official Secrets Act 1920, s 8(1). **R v Britten** [1969] 1 517, CA.

Subsequent offence—

Prisoner already serving sentence—Sentence to commence at expiration of previous sentence—Subsequent offence meaning subsequent conviction for offence—Criminal Law Act 1928, s 10. **R v Greenburg** [1943] 1 504, CCA.

Contempt of court—

Criminal contempt. *See Contempt of court* (Criminal contempt—Sentence).

Corrective training—

Adverse report by Prison Commissioners—

Accused unsuitable for corrective training—Duty of court to have regard to report. **R v Murray** [1950] 2 925, CCA.

Appropriate term—

Corrective training a form of imprisonment—Whether sentence of three years' corrective training appropriate—Petty offence but previous convictions. **R v McCarthy** [1955] 2 927, CCA.

Concurrent with term of imprisonment—

Not to run concurrently with imprisonment—Criminal Justice Act 1948, s 21(1). **R v Heritage** [1951] 1 1013, CCA.

Sentence of imprisonment to run concurrently with corrective training—Sentence of imprisonment not to take effect at conclusion of period of corrective training—Criminal Justice Act 1948, s 21(1). **R v Talbot** [1953] 1 340, CCA.

Consecutive sentences—

Power of the court to pass consecutive sentences—Criminal Justice Act 1948, s 21(1). **R v Albury** [1951] 1 491, CCA.

Duration. *See Corrective training*—Length of sentence, *post*.

Further sentence on offender already serving sentence of corrective training—

Further offence committed while offender released on licence. **R v Wilsher** [1953] 2 326, CCA.

Imprisonment—

Difference between imprisonment and corrective training—Criminal Justice Act 1948, s 21(1). **R v Ledger** [1950] 1 1104, CCA.

Length of sentence—

Term long enough for real reform to be attempted—Criminal Justice Act 1948, s 21(1). **R v Barrett** [1949] 2 689, CCA.

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Corrective training (cont)—

Length of sentence (cont)—

Two years permissible if adequate for the individual case—Criminal Justice Act 1948, s 21(1). **Practice Direction** [1961] 1 619, CCA.

Notice of previous convictions—

Cases where notice need not be served—Criminal Justice Act 1948, s 23. **Practice Note** [1966] 2 905, CCA.

Committal for sentence—Service of notice three days before sentence by quarter sessions—Criminal Justice Act 1948, s 23(1). **R v Grant** [1951] 1 28, CCA.

Proof of service—Averment of convictions in indictment—Sentence set aside—Criminal Justice Act 1948, s 23(1). **R v Allen** [1949] 2 808, CCA.

Preventive detention—

Need for date of prisoner's birth in police reports and prison reports. **R v Rossi** [1955] 1 368, CCA.

Notice of intention to prove previous convictions—Contents of notice—Criminal Justice Act 1948, ss 21(1)(2), 23(1)(2). **R v Evans** [1956] 3 750, CCA.

Notice of intention to prove previous convictions—Proof of service—Admission of convictions by offender—Attachment of notice to indictment—Criminal Justice Act 1948, ss 21(1)(2), 23(1). **R v Dickson** [1949] 2 810, CCA.

Previous convictions—Conviction in Northern Ireland—Convictions in Scotland and Abroad—Criminal Justice Act 1948, ss 21(1)(2), 23(1). **R v Murphy** [1949] 2 867, CCA.

Supervision—Previous convictions—195310206 Previous occasions—Criminal Justice Act 1948, ss 21(1)(b), 21(2)(b), 22(1)(a). **R v Rogers** [1953] 1 206, CCA.

Previous convictions—

Probation order not previous conviction for purpose of sentence of corrective training—Criminal Justice Act 1948, ss 12(1), 21(1). **R v Stobbs** [1951] 2 753, CCA.

Scottish previous convictions—No evidence that previous convictions punishable by law of Scotland on indictment with imprisonment for two years or more—Whether sentence of corrective training should stand—Criminal Justice Act 1948, s 21(1)(b). **R v Cavan** [1961] 1 560, CCA.

Prison Commissioners' report—

Copy to be given to offender—Proof—Criminal Justice Act 1948, ss 20(8), 21(5). **Practice Direction** [1959] 2 734, CCA.

Purpose of corrective training—Duties of Prison Commissioners when reporting on prisoners eligible for corrective training. **Practice Note** [1962] 1 671, CCA.

Purpose—

When an appropriate sentence. **R v Chipchase** [1962] 1 647, CCA.

When appropriate sentence—

Fulfilment of statutory conditions not sufficient to justify sentence—Duty of court to consider facts and circumstances of the case—Criminal Justice Act 1948, s 21(1). **R v Apicella** [1949] 2 813, CCA.

Criminal contempt. *See Contempt of court* (Criminal contempt—Sentence).

Criminal contempt—

Summary committal. *See Contempt of court* (Criminal contempt—Summary committal).

Crown Court. *See Crown Court* (Sentence).

Dangerous driving. *See Road traffic* (Dangerous driving—Sentence).

Death sentence—

Review—

Gibraltar. *See Gibraltar* (Criminal law—Special courts—Death sentence—Special provision for review of death sentence).

Deferment of sentence—

Consent of accused—

Counsel for accused inviting court to defer sentence—Court deciding to adopt that course—Accused not specifically asked to give his consent to deferment—Whether court's invitation equivalent to expression of consent by accused—Whether deferment valid—Powers of Criminal Courts Act 1973, s 1(3). **R v Fairhead** [1975] 2 737, CA.

Custodial sentence following deferment—

Report to court on conduct of accused and change of circumstances following deferment—Report not unfavourable to accused—Whether substantial custodial sentence wrong in principle—Powers of Criminal Courts Act 1973, s 1(1). **R v Gilby** [1975] 2 743, CA.

Magistrates—

Powers following deferment of sentence—Power to commit offender to Crown Court for sentence—Power to make such ancillary orders as may be appropriate on final disposal of case—Magistrates' Courts Act 1952, ss 28, 29—Powers of Criminal Courts Act 1973, s 1(1). **R v Gilby** [1975] 2 743, CA.

Practice—

Desirability of asking accused personally to give consent—Desirability of court stating expressly that sentence to be deferred under relevant statutory provisions—Powers of Criminal Courts Act 1973, s 1. **R v Fairhead** [1975] 2 737, CA.

Sentencing of offender after expiration of period of deferment—

Jurisdiction—Court deferring sentencing offender for six months—Offender charged with further offences during that period—Offender returning to court for sentencing after expiry of six months' period—Court 'deferring' sentencing offender until result of additional charges known—Jurisdiction of court to sentence offender after period of deferment has expired—Jurisdiction of court further to postpone sentencing offender—Criminal Justice Act 1972, s 22. **R v Ingle** [1974] 3 811, CA.

Deferred sentence—

Conviction of further offence before different location of Crown Court. *See Crown Court* (Transfer of proceedings between locations—Sentence—Deferred sentence passed on offender—Conviction of further offence before different location of court during pe

SENTENCE (cont)

Deportation—

Recommendation—

Stateless aliens—Recommendation made for other purposes. **R v Goldfarb, R v Szczenslive** [1936] 1 169, CCA.

Detention—

Age of offender—

Committal for sentence—Youthful offender under seventeen at date of conviction, over seventeen at date of sentencing—No notification that detention centre available for persons under seventeen—Court of summary jurisdiction therefore without jurisdiction to impose sentence of detention—Sentence of borstal training imposed by quarter sessions—Whether quarter sessions had jurisdiction to impose sentence of detention—Criminal Justice Act, 1948, s 20(5). **R v Hammond** [1963] 2 475, CCA.

Disqualification—

Driving licence. *See* **Road traffic** (Disqualification for holding licence).

Driving while unfit through drink or drugs. *See* **Road traffic** (Driving while unfit to drive through drink or drugs).

Drug offence—

Illegal possession of heroin. *See* **Drugs** (Dangerous drugs—Heroin—Illegal possession—Sentence).

Ecclesiastical offence. *See* **Ecclesiastical law** (Censure).

Evidence—

Accused's history—

Evidence before sentence—Details to be communicated to defending counsel. **R v Crabtree** [1952] 2 974, CCA.

Similar offences—

Plea of guilty to charge in respect of single incident—Evidence of other similar incidents forming course of conduct—Incest—Admission of single act of incest with daughter—Allegations by daughter of regular intercourse over long period—Denial of other acts of incest by accused—Judge hearing evidence of accused and daughter before passing sentence—Judge not believing accused and sentencing him on basis that incest committed by accused as regular course of conduct—Effect to deprive accused of right to trial by jury—Propriety of course followed by judge. **R v Huchison** [1972] 1 936, CA.

Exceptional sentence—

Gravity of offence—

Conspiracy to stop mail—Exceptional sentence for exceptional crime—Post Office Act 1953, s 54. **R v Wilson** [1964] 3 269, CCA.

Extended term of imprisonment—

Appropriate sentence for existing offences to be imposed—

Concurrent instead of consecutive terms of imprisonment imposed with a view to qualifying offender for an extended term if offence committed in future—Wrong in principle—Criminal Justice Act 1967, s 37. **R v Lycett** [1968] 2 1021, CA.

Conditions to be satisfied—

Previous convictions—Qualifying sentences—Sentence of imprisonment for a term of three years or more—Two sentences of imprisonment each for a term of two years or more—Sentence of imprisonment—Whether including a sentence of corrective training **training—Criminal Justice Act 1967, s 37(2)(4)(c)/(ii)**. **R v Newton** [1973] 1 758, CA.

Three year period from previous conviction—Offence committed before expiration of three years from previous conviction or from release from prison—Offence committed before release from prison—Defendant absconding shortly before end of five year term of imprisonment and committing further offence—Whether jurisdiction to impose extended term of imprisonment on conviction of further offence—Criminal Justice Act 1967, s 37(4) (a). **R v Johnson** [1976] 1 869, CA.

Consecutive terms—

Extended term consecutive to an existing term—Propriety. **R v Stewart** [1972] 1 905, CA.

Non-extended term to run consecutively to extended term—Non-extended term ordered to run consecutively to unexpired portion of extended term imposed on different occasion—Propriety—Criminal Justice Act 1967, s 37(2). **R v Jackson** [1974] 1 640, CA.

Terms imposed in respect of separate offences—Terms certified as an extended term—Propriety—Whether extended term may only be imposed in respect of single offence—Criminal Justice Act 1967, s 37(2). **R v McKenna** [1974] 1 637, CA.

Notice of previous conviction or sentence—

Procedure—Criminal Justice Act 1967, s 38(3). **R v Concannon** [1970] 3 198, CA.

Principles to be applied when imposing an extended sentence—

Protection of public—Object of extended term not only length of sentence but licensing provisions—Term of nine years reduced to seven on appeal—Criminal Justice Act 1967, ss 37(2)(4), 59. **R v Goody** [1970] 2 385, CA.

Purpose of extended term to protect public from persistent offender—

Extended term not exceeding maximum term for particular offence—Whether extended term properly given for totality of sentences—Criminal Justice Act 1967, s 37(2), (3), (5), s 60. **Director of Public Prosecutions v Ottewill** [1968] 3 153, HL.

Suspended sentence—

Extended term not applicable to a suspended sentence—Criminal Justice Act 1967, s 37. **R v Barrett** [1969] 3 272, CA, **R v Roberts** [1971] 2 529, CA.

Factors in assessing sentence—

Mitigation—

Plea of guilty—Plea as factor in mitigation of sentence. **R v de Haan** [1967] 3 618, CA.

Plea of not guilty—

Conduct of defence—Whether proper factors in assessing sentence. **R v Harper** [1967] 3 619, CA.

SENTENCE (cont)

Fine—

Bankruptcy of accused—

Accused adjudicated bankrupt after sentence imposed—Crown not proving in bankruptcy proceedings for fine as a debt—Imprisonment in default of payment of fine—Whether failure of Crown to prove in bankruptcy releasing accused from obligation to pay fine—Whether imprisonment in default of payment unlawful—Bankruptcy Act 1914, Sch 2, r 1. **Re Savundra** [1973] 3 406, QBD.

Capacity to pay—

Amount of fine should be within offender's capacity to pay. **R v Churchill (No 2)** [1966] 2 215, CCA.

Driving while disqualified. *See* **Road traffic** (Driving while disqualified for holding licence—Fine instead of imprisonment).

Magistrates. *See* **Magistrates** (Fine).

Non-payment—

Imprisonment in default of payment—Death of felon without payment of fine—Right of Crown to recover fine from personal representatives of deceased felon—Debt of record. **H M Treasury v Harris** [1957] 2 455, QBD.

Time for payment—

Direction that defendant to remain in custody until payment—Validity—Criminal Justice Act 1948, s 14(1)(2). **R v Brook** [1949] 1 787, CCA.

Firearms offence—

Prohibition on possession of firearms within five years of sentence—

Suspended sentence—Whether prohibition applicable in case of suspended sentence—Firearms Act 1968, s 21(2). **R v Fordham** [1969] 3 532, Assizes.

Hospital order—

Court of Appeal substituting hospital order with restriction for sentence of imprisonment—

Transfer direction previously made by Secretary of State—Medical evidence available on appeal—Mental Health Act 1959, ss 60, 65, 72—Criminal Appeal Act 1966, s 4(2)—Criminal Justice Act 1967, s 97(7). **R v Bennett** [1968] 2 753, CA.

Location of hospital—

Hospital order may be made for admission to a hospital in any part of the country where a vacancy exists—Mental Health Act 1959, s 60. **R v Marsden** [1968] 2 341, CA.

Order in lieu of imprisonment—

When proper to make hospital order in lieu of sentence of imprisonment. **R v Morris** [1961] 2 672, CCA.

Order restricting discharge—

Accused charged with murder but convicted of manslaughter on ground of diminished responsibility—Punishment not merited owing to mental disorder—Secure hospital available—Whether proper to make hospital order coupled with order restricting discharge—Mental Health Act 1959, ss 60, 65. **R v Cox (Maurice)** [1968] 1 386, CA.

Restriction order—

Enquiry as to facilities for legal custody—Mental Health Act 1959, ss 60, 65. **R v Higginbotham** [1961] 3 616, CCA.

Secretary of State's powers—Administrative matters—Court of Appeal only concerned that order valid—Mental Health Act 1959, s 65. **R v McNaney** [1969] 2 35, CA.

Secretary of State's powers—Mentally sub-normal person—Indecency—Conviction—Three years' imprisonment—Transfer to mental hospital and restriction imposed for period of sentence—Guidance in regard to convicted prisoners suffering from mental disorder—Mental Health Act 1959, ss 60, 65, 72. **R v Gardiner** [1967] 1 895, CA.

Imprisonment—

Breach of enforcement notice. *See* **Town and country planning** (Enforcement notice—Persistent breach of notice).

Driving while disqualified. *See* **Road traffic** (Driving while disqualified for holding licence—Imprisonment).

Extended term. *See* Extended term of imprisonment, *ante*.

Fine and imprisonment—

Further term of imprisonment in default of payment—Death of felon while serving sentence for felony and before fine paid—Whether Crown entitled to recover fine from felon's personal representatives—Criminal Justice Act 1948, ss 14(1), 15. **H M Treasury v Harris** [1957] 2 455, QBD.

Maximum sentence of imprisonment and also fine—Further term of imprisonment in default of payment—Validity—Criminal Justice Act 1948, s 14(1). **R v Carver** [1955] 1 413, CCA.

Length of sentence—

Buggery—Commission of buggery by man with boy under age of sixteen—Appropriate term of imprisonment—Factors to be taken into account—Aggravating and mitigating factors. **R v Willis** [1975] 1 620, CA.

Forgery—Possessing and uttering forged bank notes—Appropriate sentence. **R v Caughie** [1969] 3 950, CA.

Misprision of felony. **Sykes v Director of Public Prosecutions** [1961] 3 33, HL.

Power to impose heavier sentence where greater deterrent required—Power exercisable even though stage not reached where extended term of imprisonment justified. **Director of Public Prosecutions v Ottewell** [1968] 3 153, HL.

Release on licence—Prospect of release on licence not to be taken into account in imposing sentence. **R v Ottewell** [1968] 2 593, CA.

Life imprisonment. *See* Life imprisonment, *post*.

SENTENCE (cont)

Imprisonment (cont)—

Magistrates' court—

Person not legally represented—Appeal—Power of court on appeal—Sentence of imprisonment by justices invalid as defendant not legally represented—Appeal by way of rehearing—Defendant legally represented on appeal—Whether Crown Court having power to confirm sentence of imprisonment on appeal—Courts Act 1971, s 9(4)—Powers of Criminal Courts Act 1973, s 21(1). **R v Birmingham Justices, ex parte Wyatt** [1975] 3 897, QBD.

Period of imprisonment—

Unlawfully at large—Escape of prisoner while serving sentence in England—Committal to prison in Trinidad pursuant to warrant for 'arrest issued in England—Return to English prison—Whether period between committal to prison in Trinidad and return to English prison to be taken into account in calculating period for which prisoner liable to be detained—Prison Act 1952, s 49(2) (as amended by Criminal Justice Act 1961, s 30(4)). **R v Leeds Prison (Governor), ex parte Stafford** [1964] 1 610, QBD.

Preventive detention. *See* Preventive detention, *post*.Youthful offender. *See* Youthful offender—Imprisonment, *post*.

Incorrigible rogue—

Binding-over—

Nigerian offender—Offender sentenced to twelve months' imprisonment—Order binding offender over at end of imprisonment to return to Nigeria—Whether binding-over order valid—Justices of the Peace Act 1361. **R v Ayu** [1958] 3 636, CCA.

Generally. *See* Criminal law (Incorrigible rogue—Sentence).

Indictable offence tried summarily—

Committal for sentence—

Jurisdiction of quarter sessions—Offence not triable on indictment at quarter sessions—No power to sentence at quarter sessions—Prevention of Corruption Act 1906, ss 1,2—Criminal Justice Act 1948, s 29(3)(a). **R v Middlesex Quarter Sessions, ex parte Director of Public Prosecutions** [1950] 1 916, KBD.

Election by accused at summary trial for trial by jury—

Graver offences added on indictment to those charged for summary trial—Sentence not limited to maximum that justices could pass—Children and Young Persons Act 1933, s 1(1)—Offences against the Person Act 1861, ss 18, 20. **R v Roe, R v Roe** [1967] 1 492, CA.

Life imprisonment—

Commonwealth citizen—

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Deportation—

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Principle to be applied in deciding whether to impose life imprisonment. **R v Picker** [1970] 2 226, CA.

Minimum period of imprisonment—

Manslaughter—Power of court to recommend minimum period of imprisonment—Murder (Abolition of Death Penalty) Act 1965, s 1(2). **R v Flemming** [1973] 2 401, CA.

Matters to be taken into account—

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All offences to be taken into account in sentence—Practice where matter to be taken into account is pending in superior court. **R v Tarbotton** [1942] 1 198, CCA.

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Enactment increasing penalty—

Enactment coming into force after commission of offence. **R v Oliver** [1943] 2 800, CCA.

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Recommendation of minimum period to be served under sentence of life imprisonment—Whether appeal lies—Murder (Abolition of Death Penalty) Act 1965, s 1(2). **R v Aitken** [1966] 2 453, CCA.

Offence triable summarily but election by accused for trial by jury—

Consecutive sentences—

Conviction at quarter sessions on three counts of driving while disqualified—Consecutive sentences each of maximum allowable on summary conviction—Whether such sentences permissible—Magistrates' Courts Act 1952, ss25(1)(6), 108(1). **R v Furlong** [1962] 1 656, CCA.

Maximum sentence—

Conviction at quarter sessions—Sentence of nine months' imprisonment imposed—Maximum of six months' imprisonment allowable on summary conviction, but twelve months' on conviction on indictment—Whether sentence imposed by quarter sessions valid—Road Traffic Act 1960, s 110, as amended by Road Traffic Act 1962, s 8, Sch 1, Part 1, para 6. **R v Gibbs** [1964] 3 776, CCA.

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Jurisdiction—Postponement of part of sentence—Postponement for period in excess of 28 days—Road traffic offences—Custodial sentences and periods of disqualification imposed—Defendant's licence not available when sentences imposed—Subsequent research showing that defendant had two previous convictions carrying disqualification—Defendant brought back to court seven weeks later and further period of disqualification imposed under totting-up procedure—Whether court having jurisdiction to order disqualification after lapse of seven weeks—Courts Act 1971, s 11(2)—Road Traffic Act 1972, s 93(3). **R v Annesley** [1976] 1 589, CA.

Preventive detention—

Age of offender—

Prisoner aged under thirty when offence committed, but aged thirty when sentenced—Criminal Justice Act 1948, s 21(2). **R v Fallows** [1954] 1 623, CCA.

Circumstances to be taken into consideration—

Circumstances to be taken into consideration before imposing such a sentence. **Practice Note** [1962] 1 671, CCA.

Concurrent sentences—

Second sentence while first still current—Second sentence to date from conviction and absorb unexpired portion of first sentence. **R v Lake** [1961] 1 587, CCA.

Driving while unfit through drink or drugs. *See* **Road traffic** (Driving while unfit to drive through drink or drugs—Sentence—Preventive detention).

Length of sentence—

Normal period of eight years—Criminal Justice Act 1948, s 21(2). **R v Sedgwick** [1950] 2 397, CCA.

Notice of previous convictions—

Cases where notices need not be served—Criminal Justice Act 1948, s 23. **Practice Note** [1966] 2 905, CCA.

Three clear days' notice—Criminal Justice Act 1948, s 23(1). **R v Long** [1959] 3 559, CCA.

Offence out of character with previous offences—

Offence for which sentenced to preventive detention out of character with previous offences—Fourteen previous convictions for offences of dishonesty—Fifteenth offence unlawful sexual intercourse with girl aged fifteen—Whether preventive detention proper sentence for the last offence. **R v Crehan** [1962] 1 608, CCA.

Previous convictions—

Scottish previous convictions—No evidence that previous offences punishable by law of Scotland on indictment with imprisonment for two years or more—Whether sentence of preventive detention valid—Criminal Justice Act 1948, s 21(2)(b). **R v Clarkson** [1961] 1 557, CCA. **R v Cameron** [1961] 1 558, CCA.

Prison Commissioners' report—

Copy to be given to offender—Proof—Criminal Justice Act 1948, ss 20(8), 21(5). **Practice Note** [1959] 2 734, CCA.

Copy to be given to offender—Whether condition precedent to passing of sentence—Criminal Justice Act 1948, s 21(5). **Re Philpot** [1960] 1 165, QBD.

When an appropriate sentence—

Length of sentence—Criminal Justice Act 1948, s 21(2). **R v Askew** [1949] 2 687, CCA.

Prisoner over 30 years of age and having three previous convictions—Not necessarily rendering him liable to sentence of preventive detention. **R v Powell** [1953] 2 1202, CCA.

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Certificate of previous conviction—Certificate signed by clerk of peace—Conviction by magistrates' court and committal to quarter sessions for sentence—Whether certificate properly signed by clerk of peace. **Stone v Bastick** [1965] 3 713, QBD.

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Alcoholism—Activation of suspended sentence to be decided before considering cure. **R v Moylan** [1969] 3 783, CA.

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Detention—Concurrent sentence of detention in detention centre for three months and probation order for two years imposed separately on two counts—Whether probation order valid—Criminal Justice Act 1948, ss 3(1), 18(2). **R v Evans** [1958] 3 673, CCA.

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Fine—

Power of court to impose fine in addition to probation order—Criminal Justice Act 1948, ss 3(1), 13. **R v Parry** [1950] 2 1179, CCA.

Good character and antecedents—

Deliberate refusal to comply with statutory obligation—Conscientious objector refusing to undergo medical examination—Probation of Offenders Act 1907—Criminal Justice Administration Act 1914, s 8. **Eversfield v Story** [1942] 1 268, KBD.

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Terms of order—

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Willingness of offender to comply with order—

Probation order ineffective unless offender expresses his willingness to comply—Offender to be given a fair opportunity to make choice whether to be bound by order—Offender given impression custodial sentence only alternative to order—Whether order valid—Criminal Justice Act 1948, s 3(5)(as amended by the Children and Young Persons Act 1969, s 72(4), Sch 6). **R v Marquis** [1974] 2 1216, CA.

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Recall of prisoner to increase or decrease sentence—

Accused pleading guilty—

Plea in mitigation—Accused giving evidence against co-accused—Whether power to recall if evidence differs from plea in mitigation. **R v Stone** [1970] 2 594, CA.

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Prospect of remission—

Relevance to sentence—Regard not had to the earning of remission when awarding sentence. **R v Blake** [1961] 3 125, CCA.

Restitution order—

Choses in action—

Enforcement of order—Stolen money deposited in bank accounts—Rights to recover deposits constituted choses in action which could be the subject of a restitution order—Restitution order not directed expressly to any named person—Whether order binding and enforceable by civil action—Larceny Act 1916, ss 45, 46(1). **Barclays Bank Ltd v Milne** [1963] 3 663, QBD.

Discretion—

Circumstances in which discretionary power might or should not be exercised by a criminal court—Competing claim by third party—Magistrates' Courts Act 1952, s 33(1)—Larceny Act 1916, s 45(1). **Stamp v United Dominions Trust (Commercial) Ltd** [1967] 1 251, QBD.

Statement by accused at trial that money belonged to a third party—No evidence or documents before court to prove that money belonged to accused—Whether order should be made—Theft Act 1968, s 28(1)(c)(4). **R v Ferguson** [1970] 2 820, CA.

Jurisdiction—

Order not made on day of conviction—Possession of property by third party no bar—Magistrates' Courts Act 1952, s 33—Larceny Act 1916, s 45(1). **Stamp v United Dominions Trust (Commercial) Ltd** [1967] 1 251, QBD.

Magistrates—

Committal of accused to Crown Court for sentence—Whether magistrates having jurisdiction to make restitution order against accused after committal—Magistrates' Courts Act 1952, s 29—Criminal Justice Act 1967, s 56(5). **R v Blackpool Justices, ex parte Charlson and Gregory** [1972] 3 854, QBD.

Safe deposit in accused's name—

Money taken from safe deposit after arrest—Whether money taken out of his possession on his apprehension—Theft Act 1968, s 28(1)(c). **R v Ferguson** [1970] 2 820, CA.

Several offences—

Form of sentence—

Concurrent sentences or general sentence—Indictment containing five counts—No sentence on individual counts—Conviction on one count quashed—Validity of sentence. **Re Hastings** [1958] 1 707, QBD.

Separate sentences—

Consecutive or concurrent—Sentence imposed for each offence to be stated and whether sentence concurrent or consecutive. **Practice Direction** [1962] 1 417, CCA.

Several prisoners charged—

One prisoner pleading guilty—

Other prisoners tried later—All prisoners to be sentenced together. **R v Payne** [1950] 1 102, CCA.

Supervision order—

Conviction on indictment—

Conviction by justices and committal for sentence—Whether offender to be treated as having been 'convicted on indictment'—Whether court having power to make supervision order—Criminal Justice Act 1948, ss 22(1)(2), 29(1). **R v Browes** [1949] 2 449, CCA.

Discharged prisoner—

Registration of address—Person having no fixed abode—Trial by jury, on offender's election—Maximum sentence—Prison Act 1952, s 29(1)(b), Sch 1, paras 1(1), 2(1), 4(1). **R v Bishop** [1959] 2 787, CCA.

Duty of court to make order in absence of special reasons—

Special reasons for not making order to be stated—Criminal Justice Act 1948, s 22(1). **R v Keeler** [1949] 2 805, CCA.

Order not made by court of trial per incuriam—

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Previous convictions—

Admission—Need to caution prisoner—Notice of intention to prove conviction—Need to give notice to produce notice—Criminal Justice Act 1948, ss 21(1), 22(1), 23(1). **Practice Note** [1950] 1 37, CCA.

Need for sentences as well as convictions on two 'previous occasions'—Breach of probation order—Sentence for original offence and for second offence during probation passed on same occasion—Criminal Justice Act 1948, s 22(1)(a). **R v Perfect** [1957] 2 250, CCA.

Sentence of imprisonment—Imprisonment for non-payment of fine—Whether 'sentenced to imprisonment'—Criminal Justice Act 1948, s 22(1). **R v Driscoll** [1955] 2 113, CCA.

Suspended sentence—

Activation—

Fresh offence committed in respect of which probation order imposed—Whether probation order a conviction such as to enable suspended sentence to be activated—Criminal Justice Act 1948, s 12—Criminal Justice Act 1967, ss 39(1), 40(1). **R v Tarry** [1970] 2 185, CA.

Subsequent offence of different character from offence in respect of which suspended sentence was imposed—Whether suspended sentence should be brought into effect—Criminal Justice Act 1967, s 40(1)(a). **R v Griffiths** [1969] 2 806, CA.

Unjust—Trivial offence in respect of which suspended sentence was imposed—Criminal Justice Act 1967, s 40(1). **R v Moylan** [1969] 3 783, CA.

Consecutive sentences—

Sentences not consecutive to period of imprisonment then being served—Criminal Justice Act 1967, s 39(3), s 104(2)(2). **R v Flanders** [1968] 3 53, CA.

Totality of consecutive sentences exceeding two years—Validity of suspended sentence—Criminal Justice Act 1967, ss 39(1), 104(2). **R v Coleman** [1969] 2 1074, CA.

Two sentences of six months consecutive—Mandatory requirement that sentences be suspended—Court on appeal against sentence not entitled to deal with appellant more severely than he was dealt with by court below—Order that sentences stand but be suspended—Criminal Justice Act 1967, s 39(3)—Criminal Appeal Act 1968, s 11(3). **R v March** [1970] 2 534, CA.

Conviction of prisoner of capital murder and of offence on another count—

Sentence on latter count should be suspended. **Practice Direction** [1964] 3 509, CCA.

Criminal contempt—

Application of provisions relating to suspended sentences. *See Contempt of court* (Criminal contempt—Power to commit instantly to prison—Provisions relating to suspended sentences not applicable to criminal contempt).

Emergency legislation—

Statute requiring that convicted person 'be sentenced to imprisonment for not less than' minimum period specified during period of emergency—Whether power of court to suspend sentence taken away—Criminal Justice (Temporary Provisions) Act (Northern Ireland) 1970, s 1—Treatment of Offenders Act (Northern Ireland) 1968, s 18. **Kennedy v Spratt** [1971] 1 805, HL.

Extended term ordered for fresh offence—

Sentence for fresh offence to be dealt with first—Extended term ordered for fresh offence—Matters to be considered in determining extended sentence. **R v Wilkinson** [1969] 3 1263, CA.

Fine—

Imprisonment in default of payment of fine—Whether court imposing suspended sentence can also impose fine—Need for care to see that fine imposed in addition to suspended sentence is well within convicted person's means. **R v King** [1970] 2 249, CA.

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Extended term ordered for fresh offence—Exception to rule that suspended sentence should be consecutive to sentence for fresh offence. **R v Wilkinson** [1969] 3 1263, CA.

Extended term ordered for fresh offence—Matters to be considered in determining extended sentence—Criminal Justice Act 1967, s 37. **R v Roberts** [1971] 2 529, CA.

Extended term ordered for fresh offence—Suspended sentence concurrent to extended sentence—Criminal Justice Act 1967, s 37. **R v Roberts** [1971] 2 529, CA.

Extension of period of suspended sentence—Imposition of immediate sentence of imprisonment for fresh offence—Undesirability of subjecting accused to immediate and suspended sentences at same time—Criminal Justice Act 1967, s 40(1)(c). **R v Goodlad** [1973] 2 1200, CA.

Magistrates wishing to make order of probation or discharge—Duty to commit to assizes or quarter sessions for sentence—Criminal Justice Act 1967, s 56. **R v Tarry** [1970] 2 185, CA.

Sentence for fresh offence to be dealt with first—Suspended sentence to take effect consecutively to sentence for current offence. **R v Ithell** [1969] 2 449, CA.

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Variation of initial sentence to impose immediate custodial sentence—Whether court has power to vary initial sentence—Criminal Justice Act 1967, s 39(3). **R v Newsome** [1970] 3 455, CA.

Suitability as alternative to probation—

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Sentences imposed on different occasions—Time for deciding whether suspended sentence should be concurrent with or consecutive to an earlier suspended sentence is the time when the sentences are implemented—Criminal Justice Act 1967, s 40. **R v Blakeway** [1969] 2 1133, CA.

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Two or more suspended sentences (cont)—

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Appropriate period of detention—Relevant factors in determining period of detention—Gravity of offence—Attempted murder, grievous bodily harm and robbery—Safety of public—Power of Home Secretary to release offender before expiration of period—Period of detention in effect maximum period offender liable to be detained—Necessity of ensuring that offender not released whilst activities still likely to be a source of danger—Children and Young Persons Act 1933, s 53(2)(as amended by the Criminal Justice Act 1948, s 83(3), Sch 10 and the Criminal Justice Act 1961, ss 2(1), 41(1), Sch 4). **R v Storey** [1973] 3 562, CA.

Detention for such period as may be specified in the sentence—Life imprisonment—Whether life imprisonment 'a period which may be specified in the sentence'—Children and Young Persons Act 1933, s 53(2). **R v Abbott** [1963] 1 738, CCA.

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Driving while disqualified—

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No other method of dealing with offender appropriate—Statutory provision that youthful offender not to be imprisoned unless court of opinion no other method of dealing with him appropriate—Contempt in face of court—Whether statutory provision mandatory or directory—Whether sentence of imprisonment for contempt proper—Criminal Justice Act 1948, s 17(2). **Morris v The Crown Office** [1970] 1 1079, CA.

Restriction on imposing imprisonment—Imprisonment not to be imposed on person under 21 unless court of opinion no other method of dealing with him appropriate—Fine and imprisonment—Validity—Imposition of fine indicating that imprisonment not only appropriate method of dealing with offender—Whether imposition of fine and imprisonment justifiable in principle—Powers of Criminal Courts Act 1973, s 19(2). **R v Genese** [1976] 2 600, CA.

Statement of reason why no other sentence appropriate—Offender twice sentenced to borstal training—Criminal Justice Act 1948, s 17(3)—Criminal Justice Act 1961, s 3(3). **R v Jackson (alias Rintoul)** [1966] 2 346, CCA.

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Conviction for subsequent offence and sentence to six months' imprisonment—Subsequently suspended sentence of six months ordered to take effect consecutively after six months' term then current—Whether order activating suspended sentence was a passing of sentence within s 3 of Act of 1961 or was a dealing with offender within s 40(1) of the Act of 1967—Whether s 3(1) was contravened—Criminal Justice Act 1961, s 3(1)(2)—Criminal Justice Act 1967, s 40(1). **R v Lamb** [1968] 3 206, CA.

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 Settled Land Act 1925, Sch III, Part I, para xxiii. **Re Lindsay's Settlement (No 2)** [1941] 1 143, ChD.

Additions or alterations to buildings to enable them to be let—Conversion of dwelling-house into shops and flats—Whether expenditure to be borne by capital—Settled Land Act 1925, Sch III, Part I, para xxiii. **Re Swanwick House, Prestbury** [1939] 3 531, ChD.

Drainage—Compliance with order under Housing Act—New drainage—Inclusion of subsidiary repairs in sum payable out of capital—Settled Land Act 1925, s 83, Sch III, Part I, para xxi. **Re Lindsay's Settlement (No 2)** [1941] 1 143, ChD.

Structural additions to building—Erection of garages, chauffeur's flat etc short distance from mansion house—Whether additions near enough to house to be part of buildings of mansion house—Settled Land Act 1925, Sch III, Part II, para v. **Re Insole's Settlement** [1938] 3 406, CA.

Income tax allowances in respect of improvements—

Allowances received by tenant for life—Whether tenant for life accountable to settlement trustees for allowances—Settled Land Act 1925, ss 73(1)(iii)(iv), 75(2), 107(1). **Re Pelly (decd)** [1956] 2 326, CA.

Land held on trust for persons entitled in undivided shares—

Persons entitled in undivided shares on death of tenant for life—

Right of trustee of settlement to call for legal estate—Personal representative of testator as trustee of settlement—Settled Land Act 1925, ss 30(3), 36(1). **Re Thomas** [1939] 1 379, ChD.

Leasing powers of tenant for life. *See* **Settlement** (Powers of tenant for life—Leasing).

Settlement—

Statutory meaning—

Agreement for settlement—Consent order after divorce decree—Husband to secure house jointly held to wife 'for her life occupation'—Whether an 'agreement' within Settled Land Act 1925, s 1(1). **Bacon v Bacon** [1947] 2 327, Div.

Exclusion of land held on trust for sale—Land subject to equitable interests and then held on trust for sale—Legal estate vested in the persons who are the trustees for sale but not as such trustees—Compound settlement—Deeds forming compound settlement—Trustees of compound settlement—Settled Land Act 1925, s 1(1)(v)(7)—Law of Property Amendment Act 1926, Sch. **Re Sharpe's Deed of Release** [1938] 3 449, ChD.

Transactions affecting settled land—

Power of court to order unauthorised transaction to be effected—

Transaction for benefit of settled land—Purchase of furniture and chattels to re-equip mansion house destroyed by enemy action—Settled Land Act 1925, s 64. **Re Mount Edgcumbe Settled Estates** [1950] 2 242, ChD.

Will—

Will made abroad—

Whether proceeds of sale of settled land personalty. *See* **Will** (Will made abroad—Proceeds of sale of settled land—Whether personalty).

SETTLEMENT

Absolute gift—

Restrictions on enjoyment—

Failure of trusts—Destination of trust fund. **Re Gatti's Voluntary Settlement Trusts** [1936] 2 1489, ChD.

Acceleration—

'After the death of...'

Wife's interest in income not accruing on husband's death as she was not then his widow—Potential interest of wife in income—Context required to make doctrine of acceleration applicable—Interest in default of appointment accelerated notwithstanding continuance of power of appointment—Contingent interest accelerated. **Re Dawson's Settlement** [1966] 3 68, ChD.

Assignment of life interest—

Assignment with intent to merge it in contingent reversionary absolute interest—No acceleration. **Re Bellville's Settlement** [1963] 3 270, ChD.

Derivative settlement—

Income for 21 year period subjected by deed and order of the court to the same trusts as would arise on the expiration of that period—Intervening trust for accumulation which did not arise as events happened—Whether interests arising on the expiration of the year period were accelerated. **Midland Bank Executor and Trustee Co Ltd v Inland Revenue Comrs** [1959] 1 180, CA.

Disclaimer by life tenant—

Annuities subject to life interest—Whether annuities accelerated. **Re Hodge (decd)** [1943] 2 304, ChD.

Distribution 'upon the determination or failure of the last surviving life interest'—Whether disclaimer can alter vested interests in possession. **Re Young's Settlement Trusts** [1959] 2 74, ChD.

Fund held in trust for son and daughter of testatrix and after death for either of his or her children at 21—Son released his life interest—Acceleration to bring children into possession—Class of children remaining open for after-born children of former life tenant—Rule in *Andrews v Partington* not applicable. **Re Harker's Will Trusts** [1969] 3 1, ChD.

Interests in remainder vested subject to defeasance. **Re Taylor (decd)** [1957] 3 56, ChD.

Intermediate income—Devises of land to A for life with remainder to his sons in tail male, with remainder to B in fee simple—Disclaimer by A having as yet no son—Destination of intermediate income—Whether income expressly disposed of—Law of Property Act 1925, s 175(1). **Re Hatfield (decd)** [1957] 2 261, ChD.

SETTLEMENT (cont)

Acceleration (cont)—

Disclaimer by life tenant (cont)—

Life interest in share of residue—Share to be equally divided between issue on death of life tenant—Whether existing issue take to the exclusion of those subsequently born. **Re Davies (decd)** [1957] 3 52, ChD.

Residuary gift of life interest to A and B with remainder to unborn children of B on attaining specified age—Gift over to named charities in event of no child being born or attaining specified age—Disclaimer of life interests by A and B—B alive at death of testatrix but no children born—Destination of income pending death of B or birth of child—Whether doctrine of acceleration applicable in case of alternative contingent gifts—Whether acceleration of income in favour of charities. **Re Scott (deceased)** [1975] 2 1033, ChD.

Doctrine of acceleration—

General statement of doctrine. **Re Kebty-Fletcher's Will Trusts** [1967] 3 1076, ChD.

Forfeiture of life interest—

'Any event whereby any [person] entitled to any life interest would if such life interest belonged to him absolutely be deprived of the personal enjoyment thereof'—Beneficiary in German occupied territory against his will—Whether an 'enemy'—Operation of defeasance clause—Trading with the Enemy Act 1939, s 2(1)(b). **Re Hatch (decd)** [1948] 2 288, ChD.

Gift to C for life with remainder to first and other sons in tail male, and remainders over—Forfeiture of C's life interest, while C a bachelor—Acceleration of second life estate—Accelerated life estate not determined by birth of son to C. **Re Blathwayt's Will Trusts** [1950] 1 582, ChD.

Invalidity of primary trust—

Resulting trust to settlor or acceleration of secondary trust. **Re Flower's Settlement Trusts** [1957] 1 462, CA.

Accruer clause—

Accruer to funds which had not 'failed or determined'—

Fund paid absolutely to beneficiary in accordance with trusts of the settlement. **Re Huntington's Settlement Trusts** [1949] 1 674, ChD.

Trusts for children and grandchildren in unequal shares—

Accruing share accrues to other beneficiaries equally. **Re Bower's Settlement Trusts** [1942] 1 278, ChD.

Accumulation of income—

Generally. *See Accumulation.*

Total income for tax purposes. *See Income tax* (Total income—Trust income—Accumulation).

Advancement—

Consent of wife—

Wife resident in enemy country—Power of court to dispense with consent—No power in Custodian of Enemy Property to give consent. **Re Forster's Settlement** [1942] 1 180, ChD.

Express trust to accumulate income during settlor's lifetime—

Trusts for settlor's grandchildren—Express powers of advancement and maintenance—Whether powers applicable during accumulation period. **Re Henderson's Trusts** [1969] 3 769, CA.

Power to raise capital to establish life tenant in business or otherwise for his benefit or advancement—

Settlement on tenant for life and his wife and children—'Benefit'. **Re Halsted's Will Trusts** [1937] 2 570, ChD.

Purchase of business or share in a business—

Deposit with Lloyd's trustees to become underwriter—Whether included—Expediency—Trustee Act 1925, s 57(1). **Re Craven's Estate** [1937] 3 33, ChD.

Trustees failing to have proper understanding of effect of advancement—

Advancement of funds of settlement to son of life tenant—Advanced funds to be held on trusts of sub-settlement—Trust for son for life with certain other powers and trusts—All powers and trusts other than life interest void for perpetuity—Whether advancement for benefit of son—Whether advancement effective to create a life interest in possession in son. **Re Hastings-Bass (decd)** [1974] 2 193, CA.

After-acquired property—

Covenant to settle—

Children of marriage to attain vested interest at 21—Death of only child to attain a vested interest—Child's property left to mother—Whether property brought into settlement after death of child to be held for benefit of child or on ultimate trusts in default of issue attaining vested interest. **Re Bennett-Stanford Settlement Trusts** [1947] 1 888, ChD.

Coalescence of accreted property—Whether accreted property coalesced with wife's trust fund—Appointment by will of wife's trust fund. **Re Rydon Marriage Settlement** [1954] 3 1, CA.

Covenant by beneficiary—Property acquired more than thirty years later—Received by trustees and held on trusts of settlement—Claim by beneficiary to recover property from trustees. **Re Adlard's Settlement Trust** [1953] 2 1437, ChD.

Covenant to settle on trusts of a will—Covenantor acquiring absolute interest (i) under the settlement and (ii) under the will—Application of covenant. **Re Rogers' Settlement** [1951] 1 236, ChD.

Enforcement of covenant by beneficiaries—Voluntary settlement—Assignment of defeasible interest—Enforcement of covenant for further assurance. **Re Kay's Settlement** [1939] 1 245, ChD.

Exclusion of property where intention expressed—Appointment of property—Power of appointor to express intention to exclude property. **Re de la Bere Marriage Settlement Trusts** [1941] 2 533, ChD.

Hotchpot clause—Appointment of the 'wife's trust fund'—Whether accretion to original fund caught by appointment. **Re Rydon Marriage Settlement** [1954] 3 1, CA.

SETTLEMENT (cont)

After-acquired property (cont)—

Covenant to settle (cont)—

Property to which the wife may become entitled in possession or reversion—Property vested in reversion before marriage falling into possession during marriage—Property appointed to wife during marriage. **Re Maltby Marriage Settlement** [1953] 2 220, ChD.

Property to which the wife might 'after the marriage become entitled in possession or reversion'—At date of settlement wife entitled to vested but defeasible interest and indefeasibly vested interest—These not caught by covenant—At date of settlement wife entitled to contingent interest which would be caught by covenant if it vested during marriage—Doubtful whether covenant would be effective after marriage. **Re Peel's Settlement** [1964] 3 567, ChD.

Separate provision that all property comprised within covenant subject to trusts of settlement—Settlor entitled to reversionary interest under will—Death of settlor without having assigned reversionary interest to trustees of settlement—Same trustee both of will and of settlement—Beneficiaries under settlement volunteers—Whether investments standing in trustee's name representing reversionary interest formed part of settlor's estate or were held on trusts of settlement. **Re Ralli's Will Trusts** [1963] 3 940, ChD.

Agreement to permit rent free occupation of property for life—

Agreement by employer to allow widow of employee to occupy house rent free for life or so long as she may desire—

Agreement making widow a tenant for life—Property held by landlords in trust for widow for life and subject thereto in trust for them—Purchaser of landlord's interest with notice of trust—Trust binding on purchaser. **Binions v Evans** [1972] 2 70, CA.

Appeal—

Income tax. *See* **Income tax** (Appeal—Settlement).

Appointed period—

Period of income trust—

Certainty in years relevant to surtax assessments—Possible uncertainty in later years—Validity. **Muir v Inland Revenue Comrs** [1966] 3 38, CA.

Apportionment—

Capital or income. *See* **Capital or income**—Apportionment, *post*.

Bankruptcy—

Avoidance of settlement. *See* **Bankruptcy** (Avoidance of settlement).

Beneficial interests—

Absolute beneficial interest—

Division of trust fund—Accruer clause—Trustees directed to divide the trust fund or without actual division to treat the same as divided into two equal parts and to appropriate one of such parts as the share of each of settlor's two daughters—Daughter's share not to vest absolutely in her—Life interest to daughter with remainder to issue—Both daughters dying without issue—Destination of trust fund. **Re Burton's Settlement Trusts** [1955] 1 433, CA.

Exclusion from participation—

Exclusion on death of life tenant of 'an eldest son entitled for the time being under my will to my real estates for his life'—Exclusion of deceased eldest son who had been life tenant under will. **Re Gunter's Settlement Trusts** [1949] 1 680, ChD.

Gap in limitations—

No provision for events that happened—Whether gap remediable by construction. **Re Cochrane's Settlement Trusts** [1955] 1 222, ChD.

Information—

Duty of trustees to inform beneficiary of his interest—Duty to pay share of income to joint tenant of income and capital. **Hawksley v May** [1955] 3 353, QBD.

Life interest—

Power to surrender determinable life interest in vested share of child or issue in favour of child or issue—Appointment by life tenant to grandchildren 'upon attaining' thirty or surviving twenty-one years from date of appointment—Proviso creating gifts over—Whether interests appointed were vested subject to being divested or were contingent interests—Rule in **Phipps v Ackers**—Surrender of life interest to trustees to intent that it be extinguished and funds held on trust as if life tenant were dead—Whether surrender was within the power to surrender or whether the life interest was forfeited. **Re Penton's Settlements** [1968] 1 36, ChD.

Limitation dependent on void limitation—

Accord with previous valid limitations—'Issue'. **Re Mill's Declaration of Trust** [1950] 2 292, CA.

Male issue and male descendants—

Line of descent—Whether restricted to the male line of descent. **Re Du Cros' Settlement** [1961] 3 193, ChD.

Settlement of personality—

Implication of cross remainders. **Re Bickerton's Settlement** [1942] 1 217, ChD, **Re Hey's Settlement Trusts and Will Trusts** [1945] 1 618, ChD.

Strict settlement—

Limitation of tenancy in tail—Remainder to first and other sons of younger daughters in tail male—Whether entitled successively as tenants in tail male. **Re Gosset's Settlement** [1943] 2 515, ChD.

Trusts for issue—

Females attaining 21 or marrying under that age—Omitted words supplied. **Re Hargrave's Trusts** [1937] 2 545, ChD.

Ultimate trust for statutory next-of-kin—

Distribution—Whether rules before 1926 or after 1925 applicable—Contrary intention—Administration of Estates Act 1925, s 50(2). **Re Hooper's Settlement Trusts** [1943] 1 173, CA.

SETTLEMENT (cont)

Beneficial interests (cont)—

Without leaving issue—

Life interest to daughter and then to the issue on attaining 21—Gift over if she should die married without leaving issue—Daughter died having had two sons who attained 21 but pre-deceased her—Whether interests of issue defeated. **Re Milling's Settlement** [1944] 1 541, ChD.

Capital gains tax. *See* **Capital gains tax** (Settlement).

Capital or income—

Absolute interest in settled funds—

Income from funds temporarily charged in favour of third party. **Re Holliday's Will Trusts** [1947] 1 695, ChD.

Apportionment—

Dividends—Dividends of company paid out of capital assets. **Re Doughty** [1947] 1 207, CA.

Dividends—Paid out of past profits—Year to which dividends attributable—Call on shares—Satisfied out of dividends. **Re Joel** [1936] 2 962, ChD.

Fixed investment trust—Sub-units held by trustees—Nature of sums distributed by investment trust. **Re Whitehead's Will Trusts** [1959] 2 497, ChD.

Investments sold after death of tenant for life—Dividends partly accrued due during lifetime of tenant for life—Payment of apportioned part out of purchase money to the estate of tenant for life. **Re Firth's Estate** [1938] 2 217, ChD.

Power to trustees to determine apportionment in 'cases of doubt'. **Re Fenwick** [1936] 2 1096, ChD.

Profit on sale of company's assets—Application of dividend with other funds in purchase of house—Right of tenant for life to equitable charge on house. **Re Maclaren's Settlement Trusts** [1951] 2 414, ChD.

Profit on sale of company's assets—Company to continue as investment and holding company. **Re Sechiari (decd)** [1950] 1 417, ChD, **Re Kleinwort's Settlement Trusts** [1951] 2 328, ChD.

Profit on sale of company's assets—Notice by company of intention to declare dividend—Duty of trustees to sell cum dividend. **Re Rudd's Will Trusts** [1952] 1 254, ChD.

Profit on sale of part of company's interests—Sale during testator's lifetime—Dividend payable in respect of date during testator's lifetime, but not paid until after his death. **Re Winder's Will Trusts** [1951] 2 362, ChD.

Sale of land—Purchase price quantified under Town and Country Planning Act 1954 and including unexpended balance of established development value—Whether the additional one-seventh involved in computing that balance to be regarded as interest—Town and Country Planning Act 1954, s 17(2). **Re Hasluck (decd)** [1957] 3 371, ChD.

Sale of larch trees—Right of tenant for life to purchase money—Sale in proper course of management. **Re Harker's Will Trust** [1938] 1 145, ChD.

Scheme of arrangement—Cancellation of all unpaid interest on allotment of new securities and payment of cash—Apportionment of securities and cash—Companies Act 1948, s 206. **Re Morris's Will Trusts** [1960] 3 548, ChD.

Securities sold after death of tenant for life—Dividends partly accrued due during lifetime of tenant for life—Payment of apportioned part out of purchase money to the estate of tenant for life. **Re Winterstoke's Will Trusts** [1937] 4 63, ChD.

Settled share of residue—Ordinary and preference shares appropriated thereto—Payment of past preference dividend by transfer of ordinary shares. **Re Smith's Will Trusts** [1936] 2 1012, ChD.

Tithe redemption annuities—Tithe Act 1925—Tithe Act 1936. **Re Leicester's Settled Estates** [1938] 3 553, ChD.

Business profits and losses—

Business owned and carried on by testator—Business sold as a going concern after testator's death—Whether profit made before death and loss made after death in business was attributable to capital or income—Whether rule excluded by the terms of will. **Re Berry (decd)** [1961] 1 529, ChD.

Capital distribution by company in respect of shares—

Trust of dividends, interest and annual income from certain shares—Destination of sum distributed. **Re Ward** [1936] 2 773, ChD.

Casual profit—

Compensation for damage to house during military occupation. **Re Pomfret's Settlement** [1951] 2 951, ChD.

Compensation in nature of gratuity—Compensation for malicious damage. **Re Macnamara (decd)** [1936] 1 602, ChD.

Damages—Injury to land by improvements by river conservators—Agreement apart from arbitration. **Re Lindsay's Settlement (No 1)** [1941] 1 104, ChD.

Conversion of dwelling-house into shops and flats—

Expenditure to enable buildings to be let. **Re Swanwick House, Prestbury** [1939] 3 531, ChD.

Family settlement—

Permanent improvements charged to income or corpus—Trustees' power to recoup income out of corpus—Accumulations Act 1800. **Syed Omar Bin Shaikh Alkaff v Syed Abdulrahman Bin Shaikh Alkaff** [1941] 2 346, PC.

Jointure and interest on portions—

Charged primarily on income—Charged also on capital—Deficiency of income—Paid voluntarily by tenant for life—Recoupment from capital. **Re Warwick's Settlement Trusts** [1938] 1 639, CA.

Release of life interest—

Income of settled funds under resulting trust during life of settlor's wife—Income becoming subject to settlor's will after release of life interest—Whether capital or income of settlor's residuary estate. **Re Guinness's Settlement** [1966] 2 497, ChD.

SETTLEMENT (cont)

Capital or income (cont)—

Shares in limited company—

Capitalisation of company's reserved capital profits by bonus issue of loan stock—Whether loan stock capital or income in hands of trustee shareholders for beneficiaries entitled in succession. **Re Outen's Will Trusts** [1962] 3 478, ChD.

Payments to shareholders out of share premium account—Companies Act 1948, s 56(1)(2)(3). **Re Duff's Settlements Trusts** [1951] 2 534, CA.

Children—

Adopted children—

Children adopted in Union of South Africa—Adopting parents domiciled in Southern Rhodesia where this adoption was said not to be recognised—Trust in default of appointment for children of adopting father—Settlement subject to law of England—Whether adopted children entitled to benefit under trust for children. **Re Valentine's Settlement** [1965] 2 226, CA.

Class gift—

Accumulation of surplus income—

Destination. *See* **Accumulation** (Excessive period—Destination of income accruing after statutory period—Accumulation directed for the benefit of a class).

Distribution date—

Attainment of specified age—Payment of income to beneficiary over twenty-one—Trustee Act 1925, s 31(1)(i). **Re Watt's Will Trusts** [1936] 2 1555, ChD.

Fund held in trust for nephew and after death of nephew in trust for his children at 21—Nephew released his life interest—Nephew's eldest child attained 21—Class of children of nephew remaining open for afterborn children of nephew—No acceleration of interests. **Re Ketby-Fletcher's Will Trusts** [1967] 3 1076, ChD.

Gift by way of remainder to 'issue' of life tenant—'Issue' including all generations—Date for ascertainment of class entitled to take—Gift to beneficiary for life 'and thereafter for the issue of the [beneficiary] as and when they attain the age of twenty one years' in equal shares if more than one—Class limited to those in being at the date of death of life tenant—Class excluding issue born after life tenant—Whether class including issue attaining age of 21 and predeceasing life tenant. **Re Deeley's Settlement** [1973] 3 1127, ChD.

Gift of share of residue to 'my grandchildren (the children of my son [E J M])'—Distribution postponed until the youngest is twenty-one years of age—Whether grandchildren born after testator's death included in class. **Re Manners (decd)** [1955] 3 83, ChD.

Gift to children of grandson living on the attainment of the age of twenty-one by the youngest of such children—Only one such child living at date of death of testatrix—Possibility of birth of further children—Rights of existing child. **Re Ransome's Will Trusts** [1957] 1 690, ChD.

Gift to children on attaining specified age—Gift in futuro subject to life interest—No member of class existing at cesser of life interest—Closing of class on attainment of specified age by one member of class. **Re Bleckly (decd)** [1951] 1 1064, CA.

Gift to wife for life with remainder to relations of testator and wife—Date for ascertaining relations—Shares—Gift to be 'shared to my relations also my wife's relations'—Whether testator's relations and wife's relations to be ascertained at testator's death or wife's death—Whether testator contemplated single class of his own and wife's relations amongst whom gift to be shared equally. **Re Shield's Will Trusts** [1974] 2 274, ChD.

Income gift—Rule of convenience as to closing of class at date of distribution inapplicable. **Re Ward's Will Trusts** [1964] 3 442, ChD.

Joint tenancy or tenancy in common—Gift of residue to 'relations' of testator and his wife subject to wife's life interest. **Re Gansloser's Will Trusts** [1951] 2 936, CA.

Settlement of land—Trust for sale—Power of trustees to postpone sale—Trust for children of settlor's two sons 'who shall attain the age of twenty one years' etc—Eldest grandchild attaining age of 21—Sons still living—Grandchild having no power to compel sale of land on attaining vested interest—Whether fact that at the time of the settlement the property settled was solely land excluding the operation of the rule in *Andrews v Partington*. **Re Edmondson's Will Trusts** [1972] 1 444, CA.

Substituted gift for children of member of class dying during life of tenant for life—Death of member without issue during life of tenant for life—Vesting. **Greenwood v Greenwood** [1939] 2 150, PC.

Substituted gift for children of member of class dying during life of tenant for life—Vesting of gift on testator's death—Children of member living at date of will, but not children of member then dead, entitled to share as joint tenants. **Re Brooke's Will Trusts** [1953] 1 668, ChD.

Trust for children of settlor's four named children who should attain the age of 21 or being female marry—Trust for accumulation during settlor's lifetime—Express powers of maintenance and advancement in regard to vested or contingent absolute or presumptive share of any grandchild—Death of settlor—Whether class closed on attainment of vested interest by eldest grandchild. **Re Henderson's Trusts** [1969] 3 769, CA.

Trust for girl, aged four at testator's death, for life and after her death for her issue at 21, etc—Proviso that issue of deceased child of life tenant should take per stirpes—Four children born to life tenant and a number of grandchildren born in her lifetime—Issue in existence at life tenant's death intended to take beneficially but not those born afterwards—Rule in *Andrews v Partington* not applicable—Gift not void for remoteness nor for uncertainty. **Re Cockle's Will Trusts** [1967] 1 391, ChD.

Trust for settlor's children then living or thereafter to be born who should attain the age of 21 or, being female, marry—Attainment of 21 years by settlor's three children—Settlor still living—Whether trust fund distributable. **Re Wernher's Settlement Trusts** [1961] 1 184, ChD.

Exclusion—

Member of class precluded from taking by felonious killing of testator—Destination of share of excluded member. **Re Peacock (decd)** [1957] 2 98, ChD.

SETTLEMENT (cont)

Condition—

Income of trust funds to be paid to TS after transfer by her of certain shares in settlor's name—

Trust funds held on other trusts until execution of transfers and after TS's death—Failure to execute transfers during settlor's lifetime—Whether transfer to settlor's executors sufficient compliance with conditions. **Re Sage's Settlement Trusts** [1946] 2 298, ChD.

Conflict of laws. *See* **Conflict of laws** (Settlement).

Contingent interest—

Contingent interest distinguished from vested interest liable to be divested—

Interest subject to condition precedent or subsequent—Gift over on failure of condition—Appointment—Appointed funds to be held on trust for beneficiary 'if she shall attain the age of 21-years and subject as aforesaid' for two other persons—Whether beneficiary having vested interest liable to be divested. **Re Mallinson Consolidated Trusts** [1974] 2 530, ChD.

Covenant—

Enforceability—

Contract with covenantor's father and trustees to settle proceeds of sale of pictures—Enforceability by volunteers not parties thereto—Covenant not to sell pictures without giving written notice to trustees and 'in case any pictures shall be sold' the net proceeds to be held on trusts of settlement—Consideration given by covenantor's father—Children of covenantor to be beneficially entitled in default of appointment—Whether covenant was enforceable in favour of children. **Re Cook's Settlement Trusts** [1964] 3 898, ChD.

Discretionary trust—

Estate duty. *See* **Estate duty** (Passing of property—Discretionary trust).

Distribution—

Per stirpes or per capita—

Class gift—Substitutional gift—Gift over to children of settlor—In event of any child being dead leaving issue who attain 21 such issue to take deceased parent's share—Whether distribution to issue per stirpes or per capita. **Re Manly's Will Trusts (No 2)** [1976] 1 673, ChD.

Presumption of death—

Marriage settlement—Husband's disappearance in 1917—Last heard of in 1920—Liberty for settled property to be distributed as if husband were dead. **Re Newson-Smith's Settlement** [1962] 3 963, ChD.

Entailed interest—

Entailed interest in personalty—

Disposal of income pending birth of person entitled—Accumulation—Subsequent gift to carry intermediate income—Law of Property Act 1925, s 130(1). **Re Crossley's Settlement Trusts** [1955] 2 801, ChD.

Will—

Revocatory clause. *See* **Will** (Construction—Revocatory clause—Entailed interest).

Estate duty—

Exemption—

Marriage settlement. *See* **Estate duty** (Exemption—Marriage settlement).

Investments in England representing proceeds of sale of land in Eire—

Purpose of devolution. **Middleton (Earl) v Cottesloe** [1949] 1 841, HL.

Property comprised in settlement. *See* **Estate duty** (Property deemed to pass on death—Property comprised in a settlement).

Estate tail—

Contingent interest in tail in remainder—

Disentailing assurance—Devise to person who should become Duke of St. Albans in tail male—Disentailing assurance executed by presumed heir to dukedom—Effect of disentailing assurance—Fines and Recoveries Act 1833, s 15. **Re Duke of St Alban's Will Trusts** [1962] 2 402, ChD.

Rule in Shelley's case. *See* Rule in Shelley's case—Future interests—Estate tail, *post*.

Tenant in tail in remainder wishing to bar entail—

Estate subsisting in same lands prior to estate tail—Owner of prior estate not protector of settlement—Whether Court of Chancery protector of settlement—Whether consent of court to disentail necessary—Fines and Recoveries Act 1833, ss 22, 33. **Re Darnley's Will Trusts** [1970] 1 319, ChD.

Foreign adoption—

Succession. *See* **Adoption** (Foreign adoption—Settlement—Beneficial succession).

Foreign settlement—

Variation. *See* **Variation of trusts** (Jurisdiction—Trusts containing a foreign element).

Forfeiture—

Effect—

Interest to be determined 'as if dead'—Remainder over to eldest son of tenant for life—Eldest son born after forfeiture—Acceleration of subsequent life interest on forfeiture—Whether eldest son excluded from any interest in settled property by reason of parent's forfeiture. **Blathwayt v Lord Cawley** [1975] 3 625, HL.

Express advancement clause—

Consent to advancement. **Re Shaw's Settlement Trusts** [1951] 1 656, ChD.

Forfeiture only for acts done without consent—

Forfeiture by reason of legislation—No consent given or possible—Trading with the Enemy Act 1939—Trading with the Enemy (Specified Areas) Order 1940 (S R & O 1940 No 1219). **Re Furness** [1944] 1 575, CA.

Income becoming payable to another—

Beneficiary becoming enemy—Payment of further sums to Custodian of Enemy Property—Trading with the Enemy Act 1939, s 7(1)(a),(b)—Trading with the Enemy (Custodian) Order 1939 (S R & O 1939 No 1198), art 1(i),(ii)(e). **Fraenkel v Whitty** [1947] 2 646, ChD.

SETTLEMENT (cont)**Forfeiture (cont)—****Income becoming payable to another (cont)—**

Variation of settlement—Principal beneficiary given contingent interest in part of income—Whether 'any part of the income becomes vested in any other person'. **Re Dennis's Settlement Trusts** [1942] 1 520, ChD.

Writ of sequestration—Income payable to sequestrators. **Re Baring's Settlement Trusts** [1940] 3 20, ChD.

Interest determinable on bankruptcy—

Breach of trust—Unauthorised advances by trustee to tenant for life—Income taken to replace capital. **Re Balfour's Settlement** [1938] 3 259, ChD.

Protected life interest—

Receiver appointed under Lunacy Act—Fees payable to percentage account—Charge on income of life tenant—Discretionary trusts brought into operation—Lunacy Act 1890, s 148(1),(3)—Lunacy Act 1891, s 27(3)—Supreme Court Funds Rules 1927, r 67(3)—Management of Patients Estates Rules 1934 (S R & O 1934 No 269), rr 148, 152, 154, 156. **Re Cusance's Settlement and Will Trusts** [1945] 2 441, ChD.

Rentcharge to secure instalments in respect of improvements—Some improvements not within Settled Land Act 1925, Sch III, Part II—Settled Land Act 1925, s 85. **Re Liberty's Will Trusts** [1937] 1 399, ChD.

Receiver in lunacy of life tenant's property appointed—

Percentage charged on estate of lunatic—Lunacy Act 1890, s 148(3). **Re Westby's Settlement** [1950] 1 479, CA.

Validity of forfeiture clause—

Certainty—Provision for reference of questions of doubt for determination by specified authority—Effect—Forfeiture in event of departure 'from the Jewish faith', marriage to a person who is not an 'approved wife' or separation from an 'approved wife'—Approved wife defined as wife who is 'of Jewish blood' by both parents and who practices 'the Jewish faith'—In case of dispute or doubt question to be determined by a chief rabbi—Whether provision for reference to chief rabbi rendering forfeiture clause sufficiently certain. **Re Tuck's Settlement Trusts** [1976] 1 545, ChD.

Public policy—Person entitled being or becoming a Roman Catholic—Whether clause void on grounds of impermissible discrimination or as being likely to influence manner in which child is brought up. **Blathwayt v Lord Cawley** [1975] 3 625, HL.

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Generally. *See* **Income tax** (Settlement).

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'Ordinary preferred stock or shares'. **Re Powell-Cotton's Re-settlement** [1957] 1 404, ChD.

Shares of companies in any British 'colony or dependency'—Companies in Canada—Statute of Westminster 1931, s 7. **Re Brassey's Settlement** [1955] 1 577, ChD.

Such investments 'as to [the trustee] may seem fit'—Whether power limited to trustee securities. **Re Harari's Settlement Trusts** [1949] 1 430, ChD.

Irrevocable settlement—**Children—**

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Meaning of 'issue'—Gift over to children of settlor—In event of any child being then dead leaving issue who attain 21, such issue to take deceased parent's share—Whether 'issue' meaning children of deceased child or issue of all degrees. **Re Manly's Will Trusts (No 2)** [1976] 1 673, ChD.

Jointure rentcharge—**Annual sums in arrears—**

Income subsequently available for payment of arrears—Deduction of income-tax—Rate of tax to be deducted—'Standard rate for the year in which the amount payable becomes due'—Payment of jointures 'without any deduction'—Exoneration from succession and estate duties—Income Tax Act 1918, All Schedules Rules, r 19—Finance Act 1927, s 39(1). **Re Sebright** [1944] 2 547, ChD.

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Statutory power—

Exclusion of power by contrary direction. *See* **Trust and trustee** (Maintenance—Statutory power—Exclusion of power by contrary direction).

Mansion house—

Damaged by fire—

Insurance moneys received by trustees as capital moneys under Settled Land Act 1925—Mansion house on lease—No express obligation in lease to apply moneys to reinstating property—Notice of claim by tenant for moneys to be applied in reinstating property not given for some months—Application of part of insurance moneys meanwhile—Extent of Settled Land Act trustees' obligation to apply insurance moneys in reinstatement. **Mumford Hotels Ltd v Wheler** [1963] 3 250, ChD.

Maintenance and repair—

Application by tenant for life to raise sum to enable him to maintain mansion house as family residence—Jurisdiction of the court to sanction—Settled Land Act 1925, s 64—Settled Land and Trustee Acts (Court's General Powers) Act 1943, s 1. **Re Scarisbrick Settled Estates** [1944] 1 404, ChD.

Income of settled estates insufficient—Sums allowed by order of court out of testator's estate to meet expenses—Whether charged against income of other property given by testator's will on trusts corresponding to those of settled estates—Whether ordered to be paid out of such income in priority to annuities ranking first by the will. **Re Berkeley (decd)** [1968] 3 364, CA.

Property regarded as—

Original principal mansion house let—Smaller house used as residence by tenant for life. **Re Feversham Settled Estate** [1938] 2 210, ChD.

Marriage settlement—

Accumulation of income—

Property settled comprising inter alia shares in a particular company—Direction for accumulation of dividends on shares after settlor's death—Issue of bonus shares—Conversion of total shares into stock—Bonus shares accretion to original shares—Direction to accumulate applicable to bonus shares forming part of whole stock. **Re Wright's Settlement Trusts** [1945] 1 587, ChD.

Additional gift—

Gift of £20,000 by will to be held on trusts of daughter's marriage settlement—Covenant by testator in settlement to bring £10,000 into the settlement—£20,000 declared to be 'in addition' to the £10,000—Settlement trust fund vested in daughter's son—Death of son before death of testator—Destination of £20,000 on daughter's death. **Re Hickman's Will Trust** [1950] 2 285, ChD.

Covenant to pay if marriage 'solemnised'—

Ultimate trust for husband's next-of-kin—Marriage subsequently annulled—Total failure of consideration—Rights of beneficiaries defeated—Trust fund to be repaid to settlor's estate. **Re Ames' Settlement** [1946] 1 689, ChD.

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'For my said daughter's benefit and that of any children she may have'—Settlement including trust for children of first marriage—Children of second marriage excluded—Whether settlement in conformity with direction in will. **Re Potter's Will Trusts** [1943] 2 805, CA.

Substitutional or original gift—Life interests to husband, then to wife—Husband and wife dying without issue—Gift to uncles and aunts of husband and the issue of any who may have predeceased the husband—Gift over to issue of uncles and aunts substitutional—Gift to issue through all degrees—Gift contingent—Issue entitled to take—Time for substitution death of husband—Issue taking who survive parent and living at death of husband. **Re Earle's Settlement Trusts** [1971] 2 1188, ChD.

Lost settlement—

Implication of provisions. **Re Knapp's Settlement** [1952] 1 458, ChD.

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Protected life interest of husband—

Divorce—Variation of settlement by order of Divorce Court—Whether forfeiture—Trustee 'in 1925, s 33—Supreme Court of Judicature (Consolidation) Act 1925, s 192. **General Accident Fire and Life Assurance Corp Ltd v Inland Revenue Comrs** [1963] 3 259, ChD.

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Capitalisation of rent—

Resettlement subject to overriding interests not compound settlement for this purpose—Extension of term—Whether surrender and regrant—Right of tenant for life to retain whole rent—Settled Estates Act 1877, s 4—Settled Land Act 1882, ss 7(1), 11—Settled Land Act 1925, ss 52, 59(1). **Re Arkwright's Settlement** [1945] 1 404, ChD.

Tenant for life not unimpeachable for waste—Leases granted by predecessor—Proportion of rents tenant for life entitled to retain—Settled Land Act 1925, s 47. **Re Fitzwalter** [1943] 2 328, CA.

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Personalty—

Personalty settled to devolve with realty—

Beneficial interest in personalty—Personalty to be used and enjoyed by person 'actually entitled to possession or receipt of rents and profits' of settled land—Actually entitled to possession—Beneficiary entitled to interest in settled land subject to prior life interest—Beneficiary predeceasing life tenant—Whether beneficiary 'actually entitled to possession' of settled land—Whether beneficiary's interest in personalty dependent on surviving life tenant. **Re Morrison's Settlement** [1973] 3 1094, ChD.

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Children entitled—

Trust for children other than first or only son entitled for first estate in tail male—Disentail and resettlement by son entitled in remainder to estate tail—Death before life tenant—Whether entitled to portion. **Re Leeke's Settlement Trusts** [1937] 2 563, ChD.

Post-nuptial settlement—

Life assurance policy effected for benefit of 'widow or children'—

Jurisdiction to vary settlement—Matrimonial Causes Act 1950, s 125. **Lort-Williams v Lort-Williams** [1951] 2 241, CA.

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Appointment as respects expectant interests—

Meaning of 'expectant interests'. **Re Dowie's Will Trusts** [1949] 1 968, ChD.

Discretionary power—

Discretion over income of trust fund—Particular beneficiaries could in fact be ascertained with certainty—Power not void for uncertainty. **Re Gulbenkian's Settlement Trusts** [1968] 3 785, HL.

Discretion to make grants to 'dependants' and 'dependent relatives' of employees—Power coupled with a duty and power collateral—Impossibility of ascertaining all members of class of beneficiaries—Uncertainty. **Re Sayer Trust** [1956] 3 600, ChD.

Intermediate power—

Power conferred on trustees to nominate and add to a class of beneficiaries—Power exercisable in favour of anyone with certain exceptions—Whether valid. **Re Manisty's Settlement** [1973] 2 1203, ChD.

Power of sale—

Trustees having power of sale with consent of annuitant—Trustees also statutory owners—Inconsistency of two powers of sale—Statutory powers only exercisable—Settled Land Act 1925, s 108(1). **Re Jefferys** [1938] 4 120, ChD.

Revocation—

Power to revoke settlement—Release of power—Implied release. *See* **Power** (Release—Implied release—Settlement—Power to revoke settlement).

Powers of tenant for life—

Bankrupt tenant for life—

Order giving powers to trustee of settlement—Jurisdiction of court—Settled Land Act 1925, s 24(1). **Re Thornhill's Settlement** [1940] 4 249, CA.

By whom exercisable—

Compound settlement—Person named in last deed of compound settlement as tenant for life of that settlement—Settled Land Act 1925, s 23(1)(a). **Re Beaumont Settled Estates** [1937] 2 353, ChD.

Discretion given to trustees to pay income to all or any of a class of persons—Settled Land Act 1925, s 20(1)(viii). **Re Gallenga Will Trusts** [1938] 1 106, ChD.

Limitations to A with life remainder to his sons in tail with remainder to B for life—Assignment by A of life interest to trustee for benefit of 'the persons beneficially interested in the premises' under the settlement—A aged 80 and unlikely to have son—Whether B 'the person next entitled in remainder'—Settled Land Act 1925, s 105(1). **Re Maryon-Wilson's Settlements** [1969] 3 558, ChD.

Joint tenants—

Power of sale—Disagreement as to exercise of power—No evidence of mala fides in refusing to concur in sale—Whether court could order sale—Whether court should do so—Settled Land Act 1925, s 93. **Barker v Addiscott** [1969] 3 685, ChD.

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Reservation of 'best rent'—Onus of proof—Lease for less than three years—Need for condition of re-entry—Settled Land Act 1925, ss 42(1)(ii), 42(5)(ii), 110(1). **Davies v Hall** [1954] 2 330, CA.

Settled and unsettled property comprised in one lease—Contract to grant lease in consideration of redevelopment—Whether 'agreement for a lease'—Lease to take effect after twelve years—Property leased in lots—Aggregate rent exceeding one-fifth of aggregate annual values—Settled Land Act 1925, ss 42(1)(i), 44(3)(iii), 90(1)(iii), 117(1)(x). **Re Rycroft's Settlements** [1961] 3 581, ChD.

Limitation tending to discourage exercise of powers—

Application of income under personalty settlement for benefit of settled land—Limitation over on land leasing to be settled—Sale of settled land—Settled Land Act 1925, s 106(1)(b). **Re Aberconway's Settlement Trusts** [1953] 2 350, CA.

Bequest of fund upon trust to apply part of income, at trustee's discretion, for outgoings of real estate settled under same will—Income not so required to be paid to tenant for life of the settled land—Gift over of whole fund on sale of settled land—Settled land sold under statutory powers—Gift over of fund void—Tenant for life to continue to receive income—Settled Land Act 1925, s 106. **Re Herbert** [1946] 1 421, ChD.

Sale of settled land to tenant for life—

Unauthorised sale by Settled Land Act trustees—Whether transaction voidable—Whether Settled Land Act powers applicable—Settled Land Act 1925, s 68(2). **Re Pennant's Will Trusts** [1969] 2 862, ChD.

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Proceeds of sale of settled land—

Option to son to purchase after death of tenant for life—

Sale by tenant for life—Whether son entitled to proceeds of sale on tenant for life's death.

Re Armstrong's Will Trusts [1943] 2 537, ChD.

Realty or personality—

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Protected life interest—

Power of trustees to waive statutory protective trust—

Implied limitations on exercise of power—Intention of settlor—Election by beneficiary against will under equitable doctrine of election—Availability of trust fund subject to protected life interest to compensate disappointed beneficiaries—Election effecting forfeiture of protected life interest and thereby rendering fund unavailable—Power of trustees to determine protected life interest in order to make trust fund available to compensate disappointed beneficiaries—Whether trustees under a duty to exercise power for that purpose. **Re Gordon's Will Trusts** [1976] 2 577, ChD.

Purchaser dealing in good faith with tenant for life—

Protection of purchaser—

Agreement for lease with option to renew—Lessee unaware that tenant for life not absolute owner—Notice served exercising option—Order for specific performance sought—Whether executory contract for a lease a 'lease or other disposition'—Whether lessee 'purchaser dealing in good faith with a tenant for life'—Whether option rent best rent—Settled Land Act 1925, s 110(1). **Re Morgan's Lease** [1971] 2 235, ChD.

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Residuary bequest including leasehold property held for more than sixty years unexpired at testator's death—Successive life interests and gift over of 'my property'—Whether leasehold property settled land or held on trust for sale—Settled Land Act 1925, s 73(1)(xi). **Re Gough (decd)** [1957] 2 193, ChD.

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Strict settlement in common form—

Limitation to W for life, with remainder to his sons in tail male and remainders over. **Re Williams' Will Trusts** [1952] 2 502, ChD.

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Trust to pay legacies mentioned in will—

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Condition precedent—Conditions qualifying beneficiary to receive income—Provision for reference of questions of doubt for determination by specified authority—Marriage to an 'approved wife'—Approved wife defined as wife who is 'of Jewish blood' by both parents and who practices 'the Jewish faith'—Income payable to beneficiary so long as he is married to an approved wife—In case of dispute or doubt question whether wife an 'approved wife' to be determined by a chief rabbi—Whether provision for reference to chief rabbi an ouster of the court's jurisdiction—Whether provision rendering qualification sufficiently certain. **Re Tuck's settlement Trusts** [1976] 1 545, ChD.

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Settled Land Act trustee's notice of terms of lease by knowledge of tenant for life—Tenant for life the only other trustee. **Mumford Hotels Ltd v Wheeler** [1963] 3 250, ChD.

Power to appoint new trustees—

Extension of statutory powers—Will provided 'person entitled to possession or receipts of rents and profits' should have power to appoint new trustees—Whether power 'any power relating to the settled land'—A tenant for life, but B in possession of rents and profits—Whether power exercisable by A or B—Settled Land Act 1925, s 108(2). **Re Maryon-Wilson's Settlements** [1969] 3 558, ChD.

New trustees resident abroad—Validity of appointment—No absolute bar against appointment of trustees resident abroad—Power to appoint in exceptional circumstances—Beneficiaries under settlement resident abroad—Trustee Act 1925, s 36(1). **Re Whitehead's Will Trusts** [1971] 2 1334, ChD.

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No administrative problem—Settled Land Act 1925, s 64(1)—Trustee Act 1925, s 57(1). **Chapman v Chapman** [1954] 1 798, HL.

Sale or mortgage—To raise money for payment of debts of tenant for life—Repayment secured by life policy—Jurisdiction of court to sanction—Settled Land Act 1925, s 64. **Re White-Popham Settled Estates** [1936] 2 1486, CA.

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Power to revoke with consent of a judge of the Chancery Division—Validity. **Re Hooker's Settlement** [1954] 3 321, ChD.

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Undue influence—Settlement by unmarried girl shortly after coming of age—No independent advice—Laches—Costs of trustee. **Bullock v Lloyds Bank Ltd** [1954] 3 726, ChD.

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Time charterparty—

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Bill of lading (cont)—

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Delay—Measure of damages—Delay on voyage due to unseaworthiness—Outbreak of war—Diversion of ship by Admiralty—Transshipment of cargo to neutral ships for completion of voyage—Damages—Cost of transhipment. *Monarch Steamship Co Ltd v A/B Karlshamns Oljefabriker* [1949] 1 1, HL.

Delay—Measure of damages—Shipper taking delivery and paying freight—Right to recover increase in import duty and loss of profit. *The Ardennes (Owner of Cargo) v The Ardennes (Owners)* [1950] 2 517, KBD.

Over-delivery by shipowners to consignees—Whether consignees to be charged with goods over-delivered. *The Nordborg* [1939] 1 70, CA.

Production of bill of lading—Delivery of cargo without production of bill of lading—Exemption clause—Cesser of liability of carrier on goods being discharged—Construction. *Sze Hai Tong Bank Ltd v Rambler Cycle Co Ltd* [1959] 3 182, PC.

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Ships to go to loading ports as ordered—Orders not received by master owing to non-delivery of cablegram—Lien of shipowners—Freight—Deviation—Claim for return of deposit contributed in general average. *Hain Steamship Co Ltd v Tate and Lyle Ltd* [1936] 2 597, HL.

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Inclusion of term at variance with contract between parties—Admissibility of evidence as to true contract. *The Ardennes (Owner of Cargo) v The Ardennes (Owners)* [1950] 2 517, KBD.

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Cause arising without actual fault or neglect of agents or servants of carrier—Damage to cargo—Theft of cover-plate of storm valve by stevedore when loading—Ship thereby rendered unseaworthy—Cargo damaged by water entering through hole left uncovered—Whether damage due to cause arising 'without the fault or neglect of the agents or servants of the carrier'—Whether thief was agent of the shipowners when stealing the cover-plate—Carriage of Goods by Sea Act 1924, Sch, art IV, r 2(q). *Leesh River Tea Co Ltd v British India Steam Navigation Co Ltd* [1966] 3 593, CA.

Panama Canal Zone—Clause paramount incorporating United States Carriage of Goods by Sea Act 1936 with respect to shipments from United States ports—Whether clause applicable to shipment from a port in the Panama Canal Zone. *Stafford Allen & Sons Ltd v Pacific Steam Navigation Co* [1956] 2 716, CA.

Perils of the sea—Charterers' risk—Unexplained heeling of ship and loss of cargo when loading. *The Stranna* [1938] 1 458, CA.

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Immunities of shipowner—

Neglect in management of ship—Soundings—Failure to take proper soundings—Whether shipowner liable for damage resulting from failure—Whether 'neglect in management of ship'—Australian Sea Carriage of Goods Act 1924 (No 22 of 1924), Sch, art III, r 1, art IV, r 2(a). *Riverstone Meat Co Pty Ltd v Lancashire Shipping Co Ltd* [1960] 1 193, CA.

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Contract incorporating Hague Rules—Goods lost as result of fire after loading completed but before ship sailed—Whether carrier entitled to immunity—Water Carriage of Goods Act 1936 (RSC 1952, c 29), Sch, art III, r 1, art IV, rr 1, 2(a)(b). *Maxine Footwear Co Ltd v Canadian Government Merchant Marine Ltd* [1959] 2 740, PC.

Due diligence before and at beginning of voyage—Voyage in stages—Sufficiency of coal—Water Carriage of Goods Act 1910 (RSC 1927, c 207), ss 6, 7. *Northumbrian Shipping Co Ltd v E Timm & Son Ltd* [1939] 2 648, HL.

Lloyd's Register and load line surveys—Work entrusted to competent independent contractors—Unseaworthiness due to negligence of contractors' employee—Negligence not discoverable—Whether due diligence exercised by shipowners—Australian Sea Carriage of Goods Act 1924 (No 22 of 1924), Sch, art III, r 1, art IV, rr 1, 2(a). *Riverstone Meat Co Pty Ltd v Lancashire Shipping Co Ltd* [1961] 1 495, HL.

Voyage—Bunkering—Obligation of shipowner—Canadian Water Carriage of Goods Act 1936 (RSC 1952, c 29), Sch, art III, r 1, art IV, r 1. *The Makedonia* [1962] 2 614, Adm.

Incorporation of terms of charterparty—

Arbitration clause—General clause incorporating terms and conditions of charterparty, and specifically incorporating cl 30—Arbitration clause was cl 32—Wrong number stated in error—Falsa demonstratio—Paramount clause in bill of lading incorporating Hague Rules—Arbitration clause imposed time limit for appointing arbitrator, being one year from date of final discharge of cargo—Whether arbitration clause in charterparty incorporated in bill of lading contract—Meaning of 'suit'—Carriage of Goods by Sea Act 1924, Sch, art 3, rr 6, 8. *The Merak* [1965] 1 230, CA.

Demurrage—Liability of holder of bill of lading. *Roland-Linie Schiffahrt GmbH v Spillers Ltd* [1956] 3 383, QBD.

Evidence of contract of carriage—Express incorporation of terms, conditions and exceptions of charterparty—Plaintiffs suing for non-delivery of cargo as consignees, not as charterers. *The Metamorphosis* [1953] 1 723, Adm.

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Bill of lading (cont)—

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Sellers to have vendor's lien so long as they held mate's receipts—Indorsement of bills of lading—Rights of sellers in conversion. *Nippon Yusen Kaisha v Ramjiban Serowgee* [1938] 2 285, PC.

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Rights of stranger to contract—Whether stevedores entitled to rely on contract contained in bill of lading as limiting their liability to cargo-owner—Whether 'carrier' in United States Act, and in bill of lading, included stevedores—Whether carrier contracted as agent for stevedores—Whether implied contract between cargo-owner and stevedores that stevedores to have benefit of immunity from liability in contract of carriage—United States Carriage of Goods by Sea Act 1936, s 4(5). *Scruttons Ltd v Midland Silicones Ltd* [1962] 1 1, HL.

Stowage—Package—Compliance with Harter Act. *Studebaker Distributors Ltd v Charlton Steam Shipping Co Ltd* [1937] 4 304, KBD.

Negligent issue of bill of lading—

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Goods not received at dock—Liability of loading broker. *Heskell v Continental Express Ltd* [1950] 1 1033, KBD.

Omission to incorporate Hague Rules—

Act of country of port of shipment requiring incorporation—Consignees and ship of another country—Illegality—Law governing contract—Newfoundland Carriage of Goods by Sea Act 1932, ss 1, 3. *Vita Food Products Inc v Unus Shipping Co Ltd (in liquidation)* [1939] 1 513, PC.

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Estoppel—Representation in bill of lading—Reliance on representation—Representative acting to his detriment—Statement in bill of lading that goods shipped in good order and condition—Representative purchaser of goods under contract with shipper—Contract providing that certificate as to quality to be final—Certificate issued by inspector—Goods shipped in unsatisfactory condition—Bill of lading not claused to take account of condition of goods—Action by representative against shipowner for damage to goods—Whether representative would have been bound under contract with shipper to take up bills of lading even if claused—Whether representative having acted to his detriment in taking up clean bills of lading—Whether shipowner estopped from relying on fact that damage due to pre-shipment condition of goods. *Cremer v General Carriers SA* [1974] 1 1, QBD.

Goods shipped in defective condition—Clean bill of lading issued by shipowner in consideration of letter of indemnity from shipper—Compensation for loss to consignee owing to defective condition paid by shipowner—Claim by shipowner against shipper on letter of indemnity unenforceable—*Ex turpi causa non oritur actio*. *Brown Jenkinson & Co Ltd v Percy Dalton (London) Ltd* [1957] 2 844, CA.

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Short delivery—Bills of lading stating number of bags shipped but containing condition that weight, contents and value unknown—Mode of proof of contents and weight of missing bags by consignee—Indian Carriage of Goods by Sea Act 1925, Sch, art III, rr 3, 4—Carriage of Goods by Sea Act 1924, Sch, art III, rr 3, 4. *Attorney-General of Ceylon v Scindia Steam Navigation Co Ltd* [1961] 3 684, PC.

Scope of contract of carriage—

Deck cargo—Cargo 'stated' as being carried on deck—Clause in bill of lading giving liberty to carry goods as deck cargo—Carriage subject to obligation properly and carefully to carry—Carriage of Goods by Sea Act 1924, Sch, arts I(c), III, r 2. *Svenska Traktor Aktiebolaget v Maritime Agencies (Southampton) Ltd* [1953] 2 570, QBD.

Goods damaged in course of loading—Limitation of ship's liability—Carriage of Goods by Sea Act 1924, s 3, Sch, arts I(b)(e), II, IV, r (5). *Pyrene Co Ltd v Scindia Steam Navigation Co Ltd* [1954] 2 158, QBD.

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Implied undertaking. *See* Bill of lading—Implied undertaking to use due diligence to make ship seaworthy, *ante*.

Time for bringing claims—

Suit barred unless brought within one year after delivery of goods—Action brought in New York within one year, but by wrong plaintiff—Further action brought in England after one year by right plaintiff—Whether action in England statute-barred—Carriage of Goods by Sea Act 1924, s 1, Sch, art III, r 6. *Compania Colombiana de Seguros v Pacific Steam Navigation Co* [1964] 1 216, QBD.

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Cargo damaged by negligence of shipowners—Action by purchasers of part of cargo against shipowners—Purchasers having neither legal nor possessory title to goods before discharge and division of cargo—Negligence and damage occurred before then—Goods at purchasers' risk under contract with sellers—Bills of lading issued by sub-time charterers—Delivery orders in favour of purchasers deriving from the bills of lading—No privity of contract between purchasers and shipowners—Purchasers having no cause of action for negligence against shipowners. *Margarine Union GmbH v Cambay Prince Steamship Co Ltd* [1967] 3 775, QBD.

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Bill of lading (cont)—

Transfer of rights and liabilities (cont)—

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Cargo—

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Condition of cargo—Receipt as to. *See* Bill of lading—Receipt as to condition of cargo, *ante*.

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Charterparty—

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Right to substitute vessel—Construction—Charterparty for series of voyages by named ship—Clause giving owners liberty to substitute another ship—Right of owners to make more than one substitution. **S A Maritime et Commerciale of Geneva v Anglo-Iranian Oil Co Ltd** [1954] 1 529, CA.

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Charterparty (cont)—

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Duty of charterer not to ship dangerous goods—Exclusion of 'acids, explosives, arms, ammunition, or other dangerous cargo'—Turpentine—Ejusdem generis rule—Acceptance of cargo by master—Breach of charterparty by charterer—Liability to damages—Delay in unloading—Amount of damages—Limitation by terms of demurrage clause—USA Carriage of Goods Act 1936, s 4(6) (Carriage of Goods by Sea Act 1924, Sch, art IV, r 6). **Chandris v Isbrandtsen-Moller Co Inc** [1950] 1 768, KBD.

Delivery of cargo—

Delay—Measure of damages—Late delivery of goods due to deliberate breach of charterparty by deviation—Charterparty containing no liberty to deviate—Fall in market price of cargo between date ship should have arrived and date of actual arrival. **The Heron II** [1967] 3 686, HL.

Short delivery—Damages—Loss and damage to cargo due to breaches of contract by both parties—Burden of proof—Onus on claimant to establish what part of loss was caused otherwise than by his breach of contract. **Government of Ceylon v Chandris** [1965] 3 48, QBD.

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Ice clause—Vessel damaged by ice—Notice of claim clause—Sufficiency of notice—Agency. **A/S Rendal v Arcos Ltd** [1937] 3 577, HL.

War risks clause—Deviation and discharge of cargo by order of a 'Government'—Order of authorities not recognised as a government by United Kingdom government. **Luigi Monta of Genoa v Cechofracht Co Ltd** [1956] 2 769, QBD.

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Delay—Charterer unable to load within lay days—Length of delay entitling owner to rescind—Delay must be long enough to frustrate charterparty—Assessment of length of delay question of fact. **Universal Cargo Carriers Corp v Citati** [1957] 3 234, CA.

Delay—Exception clause—Delay in loading cargo—Excepted cause in existence and ascertainable when charter made—Exception for unavoidable hindrances and causes or hindrances happening without the fault of the charterers—Delay in transporting cargo to port—Lack of transport—Consequent delay in loading frustrating charter—Lack of transport existing at time charter made—Lack of transport unknown to charterers and owners—Fact readily ascertainable by charterers on making enquiry—Whether exception clause giving protection when delay frustrating contract—Whether delay due to unavoidable hindrances in loading. **The Angelia** [1973] 2 144, QBD.

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Incorporation of United States Paramount Clause—Application to charterparty of United States Carriage of Goods by Sea Act 1936—Whether Paramount Clause must be rejected as insensible—Whether loss or damage excepted by s 4(2)(a) of the Act includes loss of services of vessel—Whether damages assessed solely in relation to the voyage in which the breach occurred—United States Carriage of Goods by Sea Act 1936 (Public Statutes No 521), preamble, ss 3(1), 4(1)(2), 5, 13. **Adamastos Shipping Co Ltd v Anglo-Saxon Petroleum Co Ltd** [1958] 1 725, HL.

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No qualifying words included—Whether Hague Rules incorporated into charterparty—Carriage of Goods by Sea Act 1924, Sch, art III, r 6. **Nea Agrex SA v Baltic Shipping Co Ltd** [1976] 2 842, CA.

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Charterparty (cont)—

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Implied warranty—Vessel in need of special permission to load cargo from authorities at stipulated port of loading—Whether need of permission breach of implied warranty of seaworthiness—Whether additional warranty by shipowners to use reasonably diligence to obtain permission, and to obtain it within a reasonable time, to be implied. **Compagnie Algerienne de Meunerie v Katana Soc di Navigazione Marittima SPA** [1960] 2 55, CA.

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Time for bringing claims under arbitration clause—

Application of clause—'All disputes ... arising out of this contract'—General average claim—Charterparty making special provision for general average—Arbitration clause providing time limit for claims—General average act occurring during voyage—Claim by owners for general average—Charterers disputing liability to make general average contribution—Whether a dispute 'arising out of' contract—Whether time limit applicable. **The Union of India v E B Aaby's Rederi A/S** [1974] 2 874, HL.

Incorporation of amended Centrocon arbitration clause—Whether applicable between owners and charterers. **Tradax SA v Volkswagenwerk AG** [1969] 2 144, QBD.

Waiver—New contract—Arbitration clause stipulating time limit for claims—Claim by owners for general average—Charterparty giving vessel lien on cargo for average—General average act occurring during voyage—Claim submitted by owners—Charterers giving undertaking to pay general average 'legally due' and requesting release of cargo—Owners acknowledging undertaking and releasing cargo—Charterers subsequently disputing liability for general average—Whether owners' claim under new contract—Whether time limit stipulated in arbitration clause applicable. **The Union of India v E B Aaby's Rederi A/S** [1974] 2 874, HL.

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Novus actus interveniens—Refusal by plaintiffs of defendants' offer to tow—Plaintiffs' ship subsequently sinking and becoming a total loss—Reasonableness of refusal. **The Guildford** [1956] 2 915, Adm.

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Contributory negligence. *See* **Negligence** (Contributory negligence—Collision at sea).

Costs—

Both ships equally to blame—Costs should follow apportionment of blameworthiness. **The Lucile Bloomfield** [1967] 2 633, CA.

Discretion of wreck commissioner—Reasons for exercise of discretion—Motor tanker and motor vessel colliding—Investigation ordered by Department of Trade—Master of tanker separately represented at hearing—Commissioner exonerating master of all blame—Master applying for costs of £3,600—Department not challenging amount of master's costs—Commissioner awarding £1,500 'in exercise of discretion as a contribution'—Commissioner giving no reasons for award—Whether commissioner having exercised his discretion judicially—Whether commissioner should state reasons for exercise of discretion—Merchant Shipping Act 1894, s 466(8). **R v Wreck Comr, ex parte Knight** [1976] 3 8, QBD.

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Loss of life—Action by administratrix of deceased member of crew against owners of vessel—Action brought more than two years after collision in which deceased was injured—Whether two-year period applied to action brought against owners of ship on which deceased was carried as distinct from one brought against owners of the other vessel involved in the collision—Maritime Conventions Act 1911, s 8. **The Niceto de Larrinaga** [1965] 2 930, Adm.

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Collision (cont)—

Limitation of action (cont)—

Loss of life—Action for damages for loss of life—Action brought more than two years after casualty—Whether two-year period applied although ship sued was not in collision—Whether two-year period was affected by enactment of three-year period in relation to fatal accidents by s 3 of the Act of 1954—Discretion to extend two-year period—Maritime Conventions Act 1911, s 8—Law Reform (Limitation of Actions &c) Act 1954, s 3. **The Alnwick** [1965] 2 569, CA.

Loss or damage to vessel—Loss or damage caused by fault of another vessel—Loss or damage caused by collision or by fault of navigation without actual collision—Fault other than fault of navigation—Fault of management—Damage caused to vessel by fault of management of other vessel without collision—Whether action therefore subject to two year limitation period—Maritime Conventions Act 1911, s 8. **The Norwhale** [1975] 2 501, QBD.

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Order of dock master—Liability of dock authority—Maritime Conventions Act 1911, s 1. **The Rockabill** [1937] 1 191, CA.

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Negligent navigation—Collision between tug and passing vessel—No signal by tow to tug to warn her of on-coming vessel—Whether tug-owners or tow-owners liable for negligence of officer-in-charge of tug. **The Panther and The Ericbank** [1957] 1 641, Adm.

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Crossing vessels—

Convoys meeting on a crossing course—Crossing rule—Duties and obligations—Regulations for Preventing Collisions at Sea, rr 19, 21, 22. **Attorney-General v Anglo-American Oil Co Ltd, The 'F J Wolfe'** [1946] 1 359, CA.

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Narrow channel—

Waiting at bend rule—Entrance to harbour—Harwich Harbour Conservancy Board (1929) Bye-laws, No 8. **The Prinses Juliana, Esbjerg (Owners) v Prinses Juliana (Owners)** [1936] 1 685, Adm.

Radar—

Evidence—Radar echoes recorded mechanically—Real evidence—Radar not monitored by human agency—Whether photographic record admissible in evidence in collision action. **The Statute of Liberty** [1968] 2 195, Adm.

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Manoeuvring signals relate not only to vessel sounding but also to the vessel for whose benefit they are sounded—Failure to sound a manoeuvring signal may constitute contributory negligence—Collision Regulations 1948 (S I 1953 No 1557), Sch 1, r 28(a). **The Dayspring** [1965] 1 297, Adm.

Use of radar in fog—

Ascertainment of position of vessel—Immoderate speed—Necessity to use radar properly with seamanlike prudence—Collision Regulations 1948 (S I 1953 No 1557), Sch 1, r 16(b). **The Sitala** [1963] 2 290, Adm.

Excessive speed in fog—Failure to use radar equipment—Negligence. **The Chusan** [1956] 1 178, Adm.

Ship equipped with radar—Excessive speed—Use of equipment. **The Chusan** [1956] 1 178, Adm.

Use as aid to safety as well as aid to navigation—Collision Regulations 1948 (S I 1953 No 1557), Sch 1, r 16(a). **The Kurt Arit** [1962] 2 27, Adm.

Use by vessels at sea in foggy conditions—Ascertainment of position of vessel—Collision Regulations 1948 (S I 1953 No 1557), Sch 1, r 16(b). **The Gunnar Knudsen** [1962] 1 315, Adm.

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Arrived ship under berth charterparty—

When ship 'arrived'—Ship 'to proceed to one or two safe ports East Canada or Newfoundland, place or places as ordered by charterers'—'Place'—Berth in port. **Stag Line Ltd v Board of Trade** [1950] 1 1105, CA.

Arrived ship under port charterparty—

Arrival at position in port where within immediate and effective disposition of charterer—Ship kept waiting because berth not available—Ship anchoring at usual waiting place for ships coming to port—Anchorage within geographical, fiscal, legal and administrative area of port—Anchorage 17 miles from docks—Whether ship an 'arrived ship' on anchoring at usual waiting place. **The Johanna Oldendorff** [1973] 3 148, HL.

Charterers' duty to nominate 'place reachable on arrival'—Delay in entering port—All berths occupied—Vessel waiting outside breakwater but within roads for 4n days until berth available—Whether vessel 'arrived ship'—Whether charterers liable for damages for delay when delay within lay days. **The Delian Spirit** [1971] 2 1060, CA.

Ship kept waiting because discharging place not immediately available—Liability of holders of bills of lading. **Roland-Linie Schiffahrt GmbH v Spillers Ltd** [1956] 3 383, QBD.

Time lost waiting for berth—Delay due to cargo not being available—No berthing permit until cargo available—Ship kept lying in roads—Whether ship an arrived ship. **Sociedad Financiera de Bienes Raices SA v Agrimpex Hungarian Trading Co for Agricultural Products** [1960] 2 578, HL.

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Commencement of lay days (cont)—

Loading—

Conflict of provisions in charterparty—Provision that ship to load in customary manner in regular turn—Special provision that time for loading to commence at specified time after ship reported and ready—Special provision overriding reference to loading in regular turn. **Moor Line Ltd v Mangan-export GmbH** [1936] 2 404, KBD.

Time lost in waiting for berth to count as loading time—Ship waiting for berth but ready to load—No notice of readiness sent by master—When loading time began to run. **North River Freighters Ltd v HE The President of India** [1956] 1 50, CA.

Notice of readiness to load—

Anticipated readiness—Vessel actually ready to load at time of notice of anticipated readiness—Whether sufficient for notice of actual readiness. **Christensen v Hindustan Steel Ltd** [1971] 2 811, QBD.

Premature notice—Duty of owner to secure that vessel ready to load when notice given—Complete readiness in all holds to receive cargo subject to normal preliminaries or mere formalities—Master of vessel giving notice—Holds infested with pests—Holds requiring fumigation before loading could take place—Whether fumigation a normal preliminary or mere formality—Whether laytime commencing when notice given or when fumigation completed. **The Tres Flores** [1973] 3 967, CA.

Obstructions preventing loading of cargo—

Time for loading not to count during continuance of obstructions. *See* Demurrage—Exceptions clause—Obstructions preventing loading of cargo—Time for loading not to count during continuance of obstructions, *post*.

Readiness to discharge—

Accessibility of cargo—Vessel chartered to carry part cargo of flour—Option to owners to complete cargo en route to discharging port—Flour cargo overstowed by other cargo loaded en route—Lay days commencing only when all flour cargo accessible for discharge. **Government of Ceylon v Société Franco-Tunisienne D'Armement-Tunis** [1960] 3 797, QBD.

Ship kept waiting because discharging berth not available—During waiting period ship not in physical condition to discharge cargo because of overstorage but ready in all other respects—Whether time spent waiting to count as discharging time. **Government of Ceylon v Société Franco-Tunisienne D'Armement-Tunis** [1960] 3 797, QBD.

Unloading—

Unloading begun before notice of readiness given. **Pteroti Compania Naviera SA v National Coal Board** [1958] 1 603, QBD.

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Scope of contract—

Bill of lading. *See* Bill of lading—Scope of contract of carriage, *ante*.

Damages for breach of contract—

Carriage by sea. *See* Carriage by sea—Damages for breach of contract, *ante*.

Damages in collision cases—

Damaged vessel on time charter—

Right of charterer to recover for pecuniary loss for damage caused to vessel by third party. **The World Harmony** [1965] 2 139, Adm.

Detention—

Detention in port to repair collision damage—No charterparty lost—Profits of subsequent voyages not to be taken into account. **The Soya** [1956] 2 393, CA.

Detention in port to repair collision damage—Ship rendered unseaworthy by weather damage while proceeding to port for repair. **The Carslogie** [1952] 1 20, HL.

Loss of earnings during period of detention—Repair not urgent—New charterparty entered into after collision—Ship late in arriving at loading port owing to detention for repair—Shipowners' failure to make timely arrangements for repair—Whether loss for breach of charterparty by late arrival at loading port recoverable in addition to damages for detention. **The Pacific Concord** [1961] 1 106, Adm.

Mitigation—Vessel on charter—Subsequent charter arranged before collision—Substitution of slower ship with smaller carrying capacity under current charter—Vessel becoming free before time when current charter would have ended—Subsequent charter brought forward to begin at earlier date—Assessment of value to owners of vessel of advancement of commencement of subsequent charter—Amount so computed allowed in mitigation of damages. **The World Beauty** [1969] 3 158, CA.

No specific vessel chartered as replacement tonnage—Interest on capital value. **The Hebridean Coast** [1961] 1 82, HL.

Interest—

Collision during war between British ship and ship belonging to enemy alien—Damages awarded to alien at end of hostilities—Time from which interest accrues. **The Berwickshire** [1950] 1 699, Adm.

Right to deduct income tax on interest—Notification to payee of deduction—Income Tax Act 1952, ss 169, 170. **The Norseman** [1957] 2 660, Adm.

Loss of profits—

Pleasure vessel let on hire—Motor cruiser owned by plaintiffs for letting out on hire on the Broads—Loss of prospective profits of next season—Cruiser of distinctive design characteristic of plaintiffs' fleet—Fixed engagements at date of sinking for part of next season. **The Fortunity** [1960] 2 64, Adm.

Delay—

Delivery of cargo—

Bill of lading. *See* Bill of lading—Delivery of cargo—Delay, *ante*.

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Charterparty. *See* Charterparty—Frustration—Delay, *ante*.

Delivery of cargo—

Bill of lading. *See* Bill of lading—Delivery of cargo, *ante*.

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Demurrage—

Commencement of lay days. *See* Commencement of lay days, *ante*.

Completion of loading—

Cargo of wheat put on board in bulk and requiring to be bagged before stowing—Loading not completed until grain bagged and stowed. *Argonaut Navigation Co Ltd v Ministry of Food* [1949] 1 160, CA.

Commencement of lay-time. *See* Commencement of lay days, *ante*.

Completion of loading—

Right of charterers to detain ship for loading until expiry of lay-days. *Margaronis Navigation Agency Ltd v Henry W Peabody & Co of London Ltd* [1964] 3 333, CA.

Deliberate delay—

Demurrage clause a stipulation for agreed damages, not an exception clause inserted for the benefit of one party—Demurrage clause continuing applicable after assumed fundamental breach of charterparty by wilful delay. *Suisse Atlantique Société D'Armement Maritime SA v N V Rotterdamsche Kolen Centrale* [1966] 2 61, HL.

Exceptions clause—

Delay due to circumstances unknown to parties—Intervention of constituted authorities—Any cause beyond control of charterers—Order prohibiting night work—Inability to discharge cargo without working at night. *Steamship 'Induna' Co Ltd v British Phosphate Comrs, The Loch Dee* [1949] 1 522, KBD.

Laytime not counting during period of strike—Meaning of 'strike'—Concerted stoppage of work by men to improve conditions or vent a grievance—Necessity for continuous stoppage—Dockers at discharging port accustomed to work in shifts 24 hours each day—Dockers not contractually obliged to work 24 hours—Dockers refusing to work during night in order to bring pressure on employers to improve terms and conditions of work—Whether refusal of dockers to work at night a 'strike'. *Tramp Shipping Corporation v Greenwich Marine Inc* [1975] 2 989, CA.

Obstructions—Berths requisitioned by government—Undertaking to provide berth as soon as possible—Whether absolute undertaking. *Reardon Smith Line Ltd v East Asiatic Co Ltd* [1938] 4 107, KBD.

Obstructions—Obstructions preventing loading of cargo—Time for loading not to count during continuance of obstructions—Nomination of berth—Failure to nominate before arrival of ship—Effect—Charterers having made arrangement to load at customary berths—Berths congested on arrival of ship—Alternative berth available—Not commercially practicable to load at alternative berth—Whether charterers entitled to rely on congestion as 'obstruction' preventing loading. *The Prometheus* [1974] 1 597, QBD.

Obstructions—Obstructions preventing loading of cargo—Time for loading not to count during continuance of obstructions—Nomination of berth—Nomination before arrival of ship—Berth occupied by another vessel on arrival of ship—Effect of nomination—Port charterparty—Nomination amounting to an election which charterers could not thereafter change unilaterally—Congestion of berth amounting to an 'obstruction' preventing loading of cargo within meaning of charterparty. *The Prometheus* [1974] 1 597, QBD.

Strike occurring while vessel on demurrage—Discharge prevented—Centrocon strike clause incorporated in Baltimore Form C charterparty—Whether demurrage payable during strike period. *Compania Naviera Aeolus SA v Union of India* [1962] 3 670, HL.

Incorporation of terms of charterparty—

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Strike—Charterparty in Gencon form—General strike clause—Vessel delayed by strike—Whether half demurrage payable after strike ended until discharge completed. *The Onisilos* [1971] 2 497, CA.

Time lost waiting for berth—

Computation of time—Port charterparty—Arrived ship—Charterparty in Gencon form—Time lost waiting for berth to count as laytime—Computation—Fridays and holidays excluded from computation of laytime—Whether time lost to be calculated on same basis as laytime—Whether Fridays and holidays should be excluded from computation of time lost. *Aldebaran Compania Maritima SA Panama v Aussenhandel AG Zurich* [1976] 2 963, HL.

Port charterparty—Arrived ship—Time at which ship becomes an arrived ship—Time at which ship begins waiting for berth within area of port—Ship required to wait at anchorage outside port because of congestion—Ship sailing to port and returning immediately to anchorage—Whether ship having arrived on entering area of port before returning to anchorage. *Federal Commerce and Navigation Co Ltd v Tradax Export SA* [1976] 1 293, QBD.

War risks—

Agreement to pay demurrage and/or dead freight if ship detained by any cause—Ship damaged beyond repair—Frustration. *D/S A/S Gulnes v Imperial Chemical Industries Ltd, The Gulnes* [1938] 1 24, KBD.

Despatch money—

Charterers to have the right to average the days allowed for loading and discharging—

Time allowed for loading exceeded—Time saved on discharge—Method of 'averaging'. *Alma Shipping Co SA v V M Salgaoncar E Irmaos Ltda* [1954] 2 92, QBD.

Deviation—

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Discharge—

Custom of port—

Term of charterparty that shipowners' stevedores be employed in discharging grain cargo—Receivers' right by custom to fill into bags or buckets before discharge—Consistency—Debit of half cost to shipowners. *A/S Sameilling v Grain Importers (Ire) Ltd* [1952] 2 315, QBD.

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Discharge (cont)—

Expenses of discharging cargo—

Maximum charge—Charge not to exceed what other steamers pay (at London according to the tariff in force on 1st January 1935) maximum charges—Right of charterers to retain rebate allowed by stevedores. **Murrell SS Co Ltd v Nordenfjeldske Steamship Services Ltd, The Thurston** [1940] 1 580, CA.

Naming discharge berth—

Delivery of cargo to safe berth—Nomination by charterer of discharge berth—Ship diverted to another berth—Consequent loss of freight—Right of shipowner to recover—Measure of damages. **Anglo-Danubian Transport Co Ltd v Ministry of Food** [1949] 2 1068, KBD.

Naming port of discharge—

Ship to 'proceed (as ordered on signing bills of lading) direct to one safe port'—Option to discharge at two safe ports for small additional freight charge—Option exercised before bills of lading signed but by mistake not communicated to master or charterers' factors at loading port—Master signing bills of lading for one port only—Meaning of words 'on signing bills of lading'—Mistake—Estoppel. **Re An Arbitration between A/S Tank of Oslo and Agence Maritime L Strauss of Paris** [1940] 1 40, CA.

Safe berth—

Option to charterers to load and discharge at two safe berths in one port without extra charge—**W I Radcliffe SS Co Ltd and Wynnstey SS Co Ltd v Exportkøb of Moscow, The Llanishen** [1939] 3 528, KBD.

Seaworthy trim clause—

Expense incurred in shifting cargo to trim ship—Overtime in moving ship and looking after stowage—Loss of time—Meaning of 'homogenous cargo'—What expenses recoverable from charterers. **Chandris v Union of India** [1956] 1 358, CA.

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Removal of wreck—

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Completion of loading—Demurrage. *See* **Demurrage**—Completion of loading—Right of charterers to detain ship for loading until expiry of lay days, *ante*.

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Computation—Carriage of contemplated cargo—Option to charterer to ship other lawful merchandise—Freight to be paid at rate agreed for contemplated cargo—Vessel completely loaded partly with contemplated cargo and partly with optional cargo. **Hain Steamship Co Ltd v Minister of Food** [1949] 1 444, CA.

Claim for freight—

Defence—Cross-claim—Limitation period for cross-claim—Cross-claim for damage to cargo—Defence or counterclaim—Defence not subject to limitation period—Whether cross-claim a defence pro tanto to claim for freight—Whether cross-claim must be subject of cross-action to which limitation period applicable. **Henriksens Rederi A/S v P H Z Rolimpex** [1973] 3 589, CA.

Freight payable on delivery—

Load line submerged—Whether freight recoverable—Merchant Shipping (Safety and Load Line Conventions) Act 1932, ss 44, 57. **St John Shipping Corp v Joseph Rank Ltd** [1956] 3 683, QBD.

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General average—

General average expenditure—

General average contribution paid by cargo owners to carrying ship—Right of cargo owners to recover contribution from owners of offending ship—Right of carrying ship to claim from offending ship whole amount of general average expenditure. **Morrison Steamship Co Ltd v Owners of Cargo Lately Laden on SS Greystoke Castle** [1946] 2 696, HL.

Unseaworthiness—Expenditure incurred through ship-owners' fault—Ship unseaworthy and failure to exercise due diligence—Whether right to claim contribution from cargo owner—Remedies open to cargo owner—Whether remedies barred—York-Antwerp Rules 1950, D—Carriage of Goods by Sea Act 1924, Sch, art III, r 6, para 3. **Goulondris Bros Ltd v Goldman & Sons Ltd** [1957] 3 100, QBD.

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General average (cont)—

General average expenditure (cont)—

Vessel and cargo in position of peril—Towage contract on UK Standard Towage Conditions giving wide indemnity to tug owners—Contract a general average act—Expenditure reasonably incurred by shipowners defending actions on indemnity in Australian courts—Whether general average expenditure as being direct consequence of general average act—Risk of damage to tug at least a possibility at time of contract—York-Antwerp Rules 1950, rules A, C. **Australian Coastal Shipping Commission v Green** [1971] 1 353, CA.

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Contribution—Deviation—Whether indorsees of bill of lading bound to contribute in general average. **Hain Steamship Co Ltd v Tate & Lyle Ltd** [1936] 2 597, HL.

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Dues—

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Number of lay days. *See Number of lay days, post*.

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Exception clause—London Lighterage Clause—Unseaworthiness—Exemption from liability if loss or damage occasioned by unseaworthiness of craft—Whether unseaworthiness to be construed as at commencement of service or after—Exemption excluded if unseaworthy barge supplied recklessly—Meaning of 'recklessly'. **Shawinigan Ltd v Vokins & Co Ltd** [1961] 3 396, QBD.

Limitation of liability—

Actual fault or privity of owner—

Actual fault of privity of owner who was also master—Collision—Whether entitled to limit liability—Merchant Shipping Act 1894, s 503(1) (as amended)—Merchant Shipping (Liability of Shipowners and Others) Act 1958, s 3(2). **The Annie Hay** [1968] 1 657, Adm.

Collision—Fog—Control of owners of ship delegated to shipping department under ultimate supervision of director—Ship equipped with radar—Problems of navigation with radar in fog not impressed on master—Master's addiction to speed known to traffic department—Collision caused by inadequate use of radar and excessive speed in fog—Director alter ego of owners—Whether collision took place without owners' actual fault or privity—Merchant Shipping Act 1894, s 503(1) (as amended) by Merchant Shipping (Liability of Shipowners and Others) Act 1958, s 2(1)). **The Lady Gwendolen** [1965] 2 283, CA.

Collision—HM ship—Failure of submarine to comply with rules concerning lights—'Actual fault or privity' of Board of Admiralty. **HMS Truculent** [1951] 2 968, Adm.

Collision—Insufficient complement of certificated officers—Breach of merchant shipping ordinance—Merchant Shipping Act 1894, s 503(1). **The Empire Jamaica** [1956] 3 144, HL.

Collision—Local traffic signals ignored—Compulsory pilot on board. **The Hans Hoth** [1953] 1 218, Adm.

Collision—Owner or charterer by demise—Merchant Shipping Act 1894, s 503(i)(ii)—Merchant Shipping (Liability of Shipowners and Others) Act 1900, s 1—Merchant Shipping Act 1906, s 71—Merchant Shipping Act 1921, s 1(2). **William Cory & Son Ltd v Dorman Long & Co Ltd** [1936] 2 386, CA.

Collision—Radar—If duty arises for owners to take action in respect of master's application of the Collision Regulations the duty is absolute and cannot be divested by delegation—Merchant Shipping Act 1894, s 419—Collision Regulations 1948 (S1 1953 No 1557, Sch 1), r 16(a). **The Lady Gwendolen** [1965] 2 283, CA.

Loss of life—Negligence of shipowners' servants—Failure to provide safe system of work—Merchant Shipping Act 1894, s 503(1). **Beauchamp v Turrell** [1952] 1 719, QBD.

Wreck removal—Expenses of removing barge sunk in canal—Canal undertakers' statutory right of recovery—Barge sunk through improper navigation of owners' servants—No fault or privity in owners—Injury or damage to the canal—Loss or damage caused to property or rights of any kind—Manchester Ship Canal Act 1897, s 9—Merchant Shipping Act 1894, s 503(1)—Merchant Shipping (Liability of Shipowners and Others) Act 1900, ss 1, 3—Manchester Ship Canal Act 1936, s 32(2). **The Stonedale No 1** [1955] 2 689, HL.

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Government owned ship—HMC ship—Canada Shipping Act 1934, s 649(1), s 712. **Nisbet Shipping Co Ltd v Regiman** [1955] 3 161, PC.

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Limitation of liability (cont)—

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Rate prevailing at the date of decree—Devaluation of pound sterling after date of collision but before decree of limitation made—Rate for conversion of gold francs mentioned in s 1 of the Act of 1958 varied after devaluation—Whether new conversion rate applicable—Interest on amount fixed as limit of liability—What rate of interest applicable—Merchant Shipping (Liability of Shipowners and Others) Act 1958, s 1(3)(4)—Merchant Shipping (Limitation of Liability) (Sterling Equivalents) Order 1967 (S I 1967 No 1725), art 2. **The Mecca** [1968] 2 731, Adm.

Rate prevailing at the date of decree—Devaluation of pound sterling after date of collision but before decree of limitation made—Rate for conversion of gold francs mentioned in s 1 of the Act of 1958 varied after devaluation—Whether new conversion rate applicable—Interest on amount fixed as limit of liability—What rate of interest applicable—Merchant Shipping (Liability of Shipowners and Others) Act 1958, s 1(3)—Merchant Shipping (Limitation of Liability) (Sterling Equivalents) Order 1967 (S I 1967 No 1725), art 2. **The Abadesa** [1968] 2 726, Adm.

Costs of limitation action—

Appeal to Court of Appeal—Ordinary rules as to incidence of costs of appeals to be followed in limitation actions. **The Bramley Moore** [1964] 1 105, CA.

Appeal to Court of Appeal—Practice. **The Empire Jamaica** [1955] 3 60, CA.

Contested action—Plaintiffs to limitation action to pay normal costs of obtaining uncontested decree of limitation—Costs to follow event in contested action—Merchant Shipping Act 1894, s 503, as amended. **The Alletta (No 2)** [1972] 2 414, QBD.

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Damage caused by act in 'management or navigation' of ship—

Damage caused by person 'on board' ship—Salvage work—Damage to salvaged ship caused by diver from salvor's tug—Diver under water firing bolt gun into salvaged ship—Firing of bolt gun before adjoining tank freed from gas causing explosion—Whether act of diver in 'management or navigation' of tug—Whether act of diver 'on board' tug—Merchant Shipping Act 1894, s 503(1)(d) (as amended by Merchant Shipping (Liability of Shipowners and Others) Act 1958, s 2(1)). **The Tojo Maru** [1971] 1 1110, HL.

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Form—Harbour board claiming in respect of removal of ship sunk in collision—RSC App Q, Form No 2. **The Liverpool** [1959] 1 492, Adm.

Limitation fund—

Interest—Rate of interest applicable. **The Funabashi** [1972] 2 181, QBD.

Towage—

Collision between ship and dumb barge in tow by tug—Tug and tow in different ownership—Loss of dumb barge—Ship and tug found equally to blame—Tow found free from blame—Whether tug owners entitled to limit liability by sums calculated by reference to tonnage of tug alone—Merchant Shipping Act 1894, s 503(1)(d)(ii) (as amended by Merchant Shipping (Liability of Shipowners and Others) Act 1958, s 2(1)). **The Bramley Moore** [1964] 1 105, CA.

Indemnity clause in towage contract—Collision between trawler in tow and tug—Loss of tug and of lives of members of crew—Negligent navigation of trawler—Agreement to indemnify tug-owners against all loss and damage—Standard towage conditions—Claims by dependants of deceased and by owners of tug for negligent navigation—Claim by owners of tug for contractual indemnity—Whether owners of trawler entitled to limit liability—Merchant Shipping Act 1894, s 503(1). **Alsey Steam Fishing Co Ltd v Hillman (Owners)**, **The Kirknes** [1957] 1 977, Adm.

Limitation of liability on basis of tonnage of tug—Collision between ship and tug and barge in tow—Tug and barge in same ownership—Loss of ship—Ship and tug found to blame—Tow free from blame—Whether owner of tug and barge entitled to limit liability by reference to tonnage of tug alone—Merchant Shipping Act 1894, s 503(1)(d)(ii) (as amended by Merchant Shipping (Liability of Shipowners and Others) Act 1958, s 2(1)). **The Sir Joseph Rawlinson** [1972] 3 590, QBD.

Wreck removal—

Duty to mitigate loss—Fund paid into court—Claims—Claim by harbour board for expenses of raising wreck, etc—Claim by owners of wreck for liability to harbour board for excess of expenses over proceeds of sale of wreck, etc—Double proof—Duty of harbour board to mitigate loss—Whether owner could claim against fund—Whether harbour board should give credit for amount of owners' claim—Mersey Docks and Harbour Board Act 1954, s 3(3). **The Liverpool (No 2)** [1960] 3 307, CA.

Wreck-raising expenses—Removal of wreck by harbour authority under statutory powers—Wreck of vessel sunk in collision in which other ship solely to blame—Claim by owners of ship at fault to limit their liability in respect of wreck-raising expenses—Whether wreck-raising expenses were damage to vessel within Merchant Shipping Act 1894, s 503(1)—Whether wreck-raising expenses were damage caused to property or rights within Merchant Shipping (Liability of Shipowners and Others) Act 1900, s 1. **The Arabert** [1961] 2 385, Adm.

Wreck-raising expenses incurred abroad. *See* **Admiralty** (Arrest of vessel—Release—Release following provision of security—Order of foreign court limiting liability and for payment into court).

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Defence not subject to limitation period. *See* **Freight**—Claim for freight—Defence, *ante*.

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Jurisdiction—Additional fine—Earning capacity increased, but no evidence as to extent of increase—No jurisdiction to impose additional fine—Merchant Shipping (Safety and Load Line Conventions) Act 1932, s 44. **Rutberg v Williams** [1961] 2 649, QBD.

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Loading—

Alternative cargo—

Exception—Strikes, 'Force majeure' or 'hindrance ... beyond charterers' control'—Nomination of loading port where five out of seven grain elevators strike-bound—Wheat intended cargo, but alternative cargo options—Decision of Wheat Board to load only liners and not tramps at port during strike—Sufficient wheat in non-strike bound elevators to load tramps concerned—Delay in loading tramps—Whether nomination of strike-bound loading port valid—Whether charterers protected from demurrage claims by exceptions clause—Whether charterers bound to ship alternative cargoes—Whether, on berth charterparty, charterers in breach for not acquiring cargo until congestion of shipping after strike would allow ship to berth. **Reardon Smith Line Ltd v Ministry of Agriculture, Fisheries and Food** [1963] 1 545, HL.

Strike—Charterers not responsible for delay if intended cargo cannot be provided—Alternative cargoes—Duty of charterers to provide alternative cargo—Reasonable time allowable for its provision—Whether cargo intended for shipment must be identifiable. **South African Despatch Line v Owners of the Panamanian SS Niki** [1960] 1 285, CA.

Capacity of vessel—

Full and complete cargo within maximum and minimum limits—Shipowners' option to declare quantity within those limits—'Approximative cargo' declared by master—Cargo loaded 3.18 per cent short of quantity declared—Whether shipowners in breach of contract—Gencon form charterparty. **Louis Dreyfus et Cie v Parnaso Cia Naviera SA** [1960] 1 759, CA.

Dock in—

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Full and complete cargo—

De minimis rule. **Margaronis Navigation Agency Ltd v Henry W Peabody & Co of London Ltd** [1964] 3 333, CA.

Full cargo of wheat in bulk—Cost of bagging extra cargo—Ownership of bags—Bill of lading in form indorsed on charterparty—Indemnity to shipowner—Additional expense by reason of form of bill of lading. **Thomson v Louis Dreyfus & Co** [1936] 3 687, CA.

Inability of vessel to load full cargo—Gencon form of charterparty—Whether owners exempted from liability for expense incurred by charterers in sending balance of cargo elsewhere. **Louis Dreyfus et Cie v Parnaso Cia Naviera SA** [1960] 1 759, CA.

Lawful merchandise—Cargo not capable of being lawfully discharged at destination. **Leolga Compania de Navigacion v John Glynn & Son Ltd** [1953] 2 327, QBD.

Primary cargo wheat—Options to ship mixed cargo—No overriding obligation on charterers to exercise options in order to ship full substituted cargo if loading of wheat in bulk delayed by strike—Charterers protected by strike clause from liability for demurrage. **Reardon Smith Line Ltd v Ministry of Agriculture, Fisheries and Food** [1963] 1 545, HL.

Timber shipped in bundles—Custom to bundle—Stowage place completely filled but cargo short of carrying capacity—Dead freight. **Anfartygs A/B Halfdan v Price & Pierce Ltd** [1939] 3 672, CA.

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Loading and stowage of cargo—

Supervision of master—Master responsible for proper stowage and dunnaging of cargo—Stowage and dunnage instructions given by charterer—Damage to cargo—Improper stowage—Master having followed charterer's stowage instructions—Whether master liable for damage to cargo resulting from improper stowage. **Ismail v Polish Ocean Lines** [1976] 1 902, CA.

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Effect of nomination—Selection of berth notified to owners or master—Whether amounting to an election which charterers thereafter unable to change unilaterally. **The Prometheus** [1974] 1 597, QBD.

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Damage caused by entering unsafe port—Safe port—Approved loading place—Warranty of safety of berth—Right of charterers to order loading at two safe loading places—Ship grounded at unsafe loading place—Liability of charterers—Volenti non fit injuria. **Compania Naviera Maropan SA v Bowaters Lloyd Pulp and Paper Mills Ltd** [1955] 2 241, CA.

Damage caused by entering unsafe port—Ship damaged at unsafe port or wharf nominated by charterer—Liability of charterer. **Reardon Smith Line Ltd v Australian Wheat Board** [1956] 1 456, PC.

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Liens recognised by English law—

Lien for unpaid national insurance contributions—Italian law—Not recognised maritime lien in English law. *The Acrux* [1965] 2 323, Adm.

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Seaman—Special contract—Wages payable under a special contract—Pension fund contributions—Employer's and employee's contributions—Failure of employer to pay contributions to fund—Lien on ship—Whether seaman entitled to maritime lien in respect of unpaid contributions—Administration of Justice Act 1956, ss 1(1)(o), 3(3). *The Halcyon Skies* [1976] 1 856, QBD.

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Differentiation between vessels involved not possible—Whether appellate court would interfere with decision. *The Lucile Bloomfield* [1967] 2 633, CA.

Ship in canal under tow—Collision between steam tug and passing vessel—No signal by tow to tug to warn her of on-coming vessel—Officer-in-charge of tug negligent in not stopping her port propeller revolving on seeing on-coming vessel—Whether tug-owners or tow-owners liable for negligence of officer-in-charge of tug—Maritime Conventions Act 1911, s 1(1). *The Panther and The Ericbank* [1957] 1 641, Adm.

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Two ships in collision—Third ship damaged trying to avoid colliding ships—Contribution to damage suffered by third ship—Method of apportionment of liability—Maritime Conventions Act 1911, s 1(1). *The Miraflores and the Abadesa* [1967] 1 672, HL.

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Part of day unusable because of weather—Apportionment of usable and non-usable time in calculating weather working days. **Reardon Smith Line Ltd v Ministry of Agriculture, Fisheries and Food** [1963] 1 545, HL.Regard to be had to working hours—Need to deduct number of hours during which work suspended because of weather. **Alvion Steamship Corp'n of Panama v Galban Lobo Trading Co SA of Havana** [1955] 1 457, CA.Ship ordered by harbour master from berth for six days due to threat of bore tide—Illegality of loading—Whether time when ship absent from berth to be included in assessment of lay-time. **Compania Crystal de Vapores of Panama v Herman & Mohatta (India) Ltd** [1958] 2 508, QBD.Weather such as to justify work being stopped—Work not interrupted, or not intended to be done, at that time—Whether times excluded in computing lay time. **Compania Naviera Azuero SA v British Oil and Cake Mills Ltd** [1957] 2 241, QBD.Working days—Overtime—Whether overtime included. **NV Maatschappij Zeevaart v M Friesacher Soehne** [1962] 2 511, QBD.Working days not unavailable for work because of weather—Expression not including non-working days on which weather would have permitted working. **Reardon Smith Line Ltd v Ministry of Agriculture, Fisheries and Food** [1963] 1 545, HL.

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Waters navigable by sea-going ships—Dry dock—Vessel in dock—Dock navigable by sea-going ships when full of water—Discharge of oil from vessel when water partially pumped out of dock—Water no longer navigable at that stage—Whether oil discharged into 'waters...navigable by sea-going ships'—Prevention of Oil Pollution Act 1971, s 2(2)(b). **Rankin v De Coster** [1975] 2 303, QBD.

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Fishing vessel used for pleasure trip—Need for certificate as to survey—Merchant Shipping Act 1894, s 267, s 271(1). **Graham v Duncan** [1950] 2 534, KBD.

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Negligence—Exclusion of liability in contract of carriage—Conditions of passenger ticket—Exclusion of liability for loss or damage in certain circumstances—'From any other cause whatsoever'—Passenger slipping on floor being washed. **Beaumont-Thomas v Blue Star Line Ltd** [1939] 3 127, CA.Negligence—Exclusion of liability in contract of carriage—Protection of independent contractors and others not parties to the contract—Distinction between carriage of goods and carriage of passengers. **Adler v Dickson** [1954] 3 397, CA.

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Disqualification from claiming salvage—

Salvage services by ship in same ownership as ship in collision—Remuneration—Circuity of action. **The Kafiristan** [1937] 3 747, HL.

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Ship's log—Admissibility—Admissions in pleadings—Inferences from admissions. **The Cornish Rose** [1936] 2 805, Adm.

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Damage to salvaged vessel—Successful salvage—Liability of salvor for negligence—Claim by salvor to award—Counterclaim by shipowner for damages—Damages exceeding remuneration to which salvor entitled—Whether shipowner restricted to right of set-off against salvage award—Whether shipowner entitled to maintain action for amount of actual loss. **The Tojo Maru** [1971] 1 1110, HL.

Degree of care and skill—Salvage department of navy. **Anglo-Saxon Petroleum Co Ltd v Damant** [1947] 2 465, CA.

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Two sums paid into court—Two vessels belonging to same owner salvaged by five tugs and four tugs respectively also belonging to one owner—Payment into court of two separate sums in respect of each salvaged vessel—Separate causes of action by owners, master and crew of each tug joined in one action—Whether separate sums should be allocated in respect of each tug rendering salvage services—RSC Ord 22, r 1(5). **The Talamba and the Troll** [1965] 2 775, Adm.

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Apportionment among crew—Basis—Basic pay—Exclusion of war bonus. **The Empire Gulf** [1948] 1 564, Adm.

Apportionment between owners, masters and crew. **The Mungana** [1936] 3 670, Adm.

Apportionment between two sets of salvors—Payment into court—One sum—Two salvors—Two causes of action consolidated—Whether sum paid need be apportioned between two salvors—RSC Ord 22, r 1(2). **The Bosworth** [1960] 1 146, Adm.

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Assessment of amount of award—Tax liability—Award for personal services—Award liable to taxation in hands of salvors—Whether taxation taken into account in assessing amount of award. **The Telemachus** [1957] 1 72, Adm.

Assessment of amount of award—Tax liability—Award liable to taxation in hands of salvors—Whether taxation to be taken into account in assessing amount of award. **Island Tug & Barge Ltd v Owners of the SS Makedonia** [1958] 1 236, QBD.

Contribution—Value of ship. **The Eisenach** [1936] 1 855, Adm.

Interest—Admiralty Court—Power to award interest on salvage award—Proceedings for recovery of debt—Salvage services not rendered under any special form of salvage agreement—Whether proceedings for the recovery of salvage remuneration proceedings for recovery of debt—Whether Admiralty Court having jurisdiction to award interest—Law Reform (Miscellaneous Provisions) Act 1934, s 3(1). **The Aldora** [1975] 2 69, QBD.

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Evidence—Admissibility—Charges under Defence (General) Regulations—Ship's log-book—Entry not brought to man's notice as provided by the Merchant Shipping Act 1894—Whether log-book admissible as evidence of charge—Defence (General) Regulations 1939, reg 47A—Merchant Shipping Act 1894, ss 228, 239, 695. **Robinson v Robson** [1943] 1 511, KBD.

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Entitlement—Wreck or loss of ship—Ship abandoned some time after original injury—Date of wreck—Merchant Shipping (International Labour Conventions) Act 1925, s 1(1). **The Terneuzen** [1938] 2 348, Adm.

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Liberty to cancel if 'war breaks out involving Japan'—Meaning of 'war'. **Kawasaki Kisen Kabushiki Kaisha of Kobe v Bantham SS Co Ltd** [1939] 1 819, CA.

Liberty to cancel should certain powers become engaged in war with one another—Time within which option should be exercised—Implied term—Reasonable time. **Re An Arbitration between Kawasaki Kisen Kabushiki Kaisha and Belships Co Ltd, Skibsakjeselskap** [1939] 2 108, KBD.

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Hire not payable in respect of time lost owing to 'deficiency of men...or other accident'—Refusal of officers and men to sail during war except in convoy. **Greek Government v Minister of Transport, The Iliossos** [1949] 1 171, CA.

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Ship torpedoed but not sinking until 14 days later—When hire ceases to be payable—Actual total loss—Constructive total loss—Abandonment—Marine Insurance Act 1906, ss 57(1), 60, 61, 62(1), 63. **Court Line Ltd v R, The Lavington** [1945] 2 357, CA.

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Time charterparty (cont)—

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Extension of period to complete voyage—Voyage continuing after specified period because of dock strikes—Whether hire for excess period payable at charter rate, or market rate. **Timber Shipping Co SA v London & Overseas Freighters Ltd** [1971] 2 599, HL.

Employment and indemnity clause—

Master to be under orders of charterers—Charterers to indemnify owners against all liabilities arising from compliance with orders—Charterers responsible for loss or damage caused to owners by improper or negligent act by them or their servants—'Servants'—Independent contractors engaged by charterers to load vessel—Stevedore injured—Owners paid sum to stevedore in settlement of potential liability—Whether sum recoverable from charterers. **The White Rose** [1969] 3 374, QBD.

Master to obey order of charterer 'as regards employment'—Ship stranded while returning home in ballast after discharging cargo at War Base—Ship ordered to leave port by charterer's representative—Chief officer's request to postpone sailing owing to bad weather refused by sea transport officer—Stranding of ship not consequence of order—Charterer not liable for Naval Orders. **Larrinaga Steamship Co Ltd v R** [1945] 1 329, HL.

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Baltic charterparty—Damage—Second sentence of clause exempting owners from liability for 'damage...whatsoever and howsoever caused'—'Damage' in this part of clause to be widely construed—Not limited to physical loss but covering financial loss—Claims by charterers for loss of time and for expenses resulting from master's wrongful refusal to enter a port—'Damage' wide enough to cover both heads of claim—Owners exempt from liability. **Nippon Yusen Kaisha v Acme Shipping Corp** [1972] 1 35, CA.

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Non-payment of hire—Withdrawal of vessel. *See* Time charterparty—Withdrawal of vessel for non-payment of hire, *post*.

Non-payment of hire—Method of payment agreed between parties—Extrinsic evidence to prove method. **A/S Tankexpress v Compagnie Financiere Belge des Petroles SA** [1948] 2 939, HL.

Payment of hire—Payment in advance—Hire calculated deadweight—Hire not due until deadweight communicated to charterers. **Kawasaki Kisen Kaisha Ltd v Bantham SS Co Ltd** [1938] 3 690, CA.

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Construction—Baltic charterparty with added typed clause—Exception clause (printed) limiting shipowners' responsibility—Typed clause imposing positive obligation on shipowners specific to charterers' voyage—Conflict between clauses—Whether type clause prevailed over printed clause—Construction of printed exception clause (cl 13). **Gesellschaft Burgerlichen Rechts v Stockholms Rederiaktiebolag Svea (SS Brabant)** [1966] 1 961, QBD.

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Incompetent and inadequate engine-room staff—Whether charterers entitled to repudiate charter. **Hong Kong Fir Shipping Co Ltd v Kawasaki Kisen Kaisha Ltd** [1962] 1 474, CA.

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Withdrawal of vessel for non-payment of hire—

Punctual payment—Right to withdraw ship 'failing punctual payment'—Late payment made before right of withdrawal exercised—Whether shipowners entitled to withdraw in any event once payment overdue. **The Brimnes** [1974] 3 88, CA.

Tender of hire curing default—Instalment of hire due on a Saturday when banks were closed—Charterers mistakenly thinking that payment on the following Monday would do—Payment of hire tendered on Monday afternoon—Charterers in default of payment—Before payment tendered, notice sent by owners to the master withdrawing ship—Notice of withdrawal not sent to charterers until after payment tendered—Default in payment cured by tender—Owners not entitled to withdraw ship unless notice given to charterers—Whether sufficient tender of hire. **Empresa Cubana de Fletes v Lagonisi Shipping Co Ltd** [1971] 1 193, CA.

Waiver of right to withdraw—Hire payable in advance—Late payment—Acceptance by shipowner's bank—Hire relating in part to period after right of withdrawal has arisen—Shipowner's knowledge at time payment accepted that right of withdrawal has arisen—Shipowner's bank bound to accept payments tendered by charterers—Whether acceptance of hire accrued due before right of withdrawal arising constituting waiver—Whether acceptance by bank amounting to waiver. **The Brimnes** [1974] 3 88, CA.

Waiver of right to withdraw—Underpayment of hire—Request by owner for explanation of under-payment and demand for balance of hire—Failure of charterer to comply with request or demand within reasonable time—Whether by reason of request and demand owner having waived right to withdraw vessel. **China National Foreign Trade Transportation Corporation v Evlogia Shipping Co SA of Panama** [1976] 3 865, QBD.

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Waiver of right to withdraw—Underpayment of hire—Underpayment in time—Acceptance of underpayment in knowledge that charterer would or might fail to pay balance in time—Whether acceptance of underpayment constituting a waiver of right to withdraw in event of failure to pay balance in time. *China National Foreign Trade Transportation Corporation v Evlogia Shipping Co SA* o+ Panama [1976] 3 865, QBD.

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Claim to indemnity by tug owners when in breach of terms of contract—Whether tug owner precluded from relying on exception clause. *The Albion* [1953] 2 679, CA.

Collision between tug and hirer's vessel—Negligent navigation of tug—At time of collision, tug in position to receive orders from hirer's vessel to pick up ropes or lines, but not in position to carry out such orders—Whether collision occurred 'whilst towing'—United Kingdom Standard Towage Conditions, cl 1. *The Impetus* [1959] 2 354, Adm.

Collision between tug and ship—Liability of shipowners—'Whilst towing'—United Kingdom Standard Towage Conditions, cl 1, 3. *W J Guy & Son (a firm) v Glen Line Ltd* [1948] 1 245, CA.

Damage to tug whilst towing—Liability of hirer—'Whilst towing'—Tug in position where those on board could reasonably expect to receive an order—Tug ready to respond to order—Collision between tug and moored object—Necessity for tug to execute manoeuvre before being able to carry out order to pick up line—Master and crew on board but not at stations when order given—Collision occurring whilst tug manoeuvring to take up position to carry out order—Whether collision occurring whilst towing—United Kingdom Standard Towing Conditions, cl 1. *The Apollon* [1971] 2 1223, Adm.

Hirer's liability for loss of life of member of crew of tug whilst towing—United Kingdom Standard Towage Conditions, cl 1, 3, 4. *Great Western Ry Co v Royal Norwegian Government* [1945] 1 324, KBD.

Liability of shipowners—Interrupted towage—Collision with third vessel while tug manoeuvring into position to continue towage—Condition in contract—Tug under control of ship 'whilst towage...or assistance services being performed'. *The Baltyk* [1947] 2 560, Adm.

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Commencement of towage—Port of London Dock Bye-laws 1928, No 19. *Port of London Authority v Clen Colquhoun (Owners)* [1936] 1 429, Adm.

Sum payable for services—

Cardiff tug owner's towage rates—Normal assistance—Different rates for 'towage or assistance of steamers not normal'—Steamship towed into Cardiff docks—Port engine of tow out of order—Whether rate for 'steamers not normal' applicable. *Edmund Handcock (1929) Ltd v Furness-Houlder Argentine Lines Ltd, The Princesa* [1945] 2 429, CA.

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Duty of wharf-owner with respect to use of berth—

Safety of berth—Invitation to ship to berth—Arrangement for ship to go to berth adjoining her usual berth—Berth unsafe for particular ship—Liability of wharfinger. *Onesimus Dorey & Sons Ltd v Headley's Wharf Ltd and William Ashby Ltd* [1939] 3 23, CA.

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Statutory half-holiday for shop assistants—

Hotel—Dining-room open to non-residents—Waiter—Whether 'shop assistant'—Whether entitled to statutory weekly half-holiday—Shops Act 1912, ss 1, 19(1). *George Hotel (Colchester) Ltd v Ball* [1938] 3 790, KBD.

Costermonger's barrow—

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Jewish shop—Order made by local authority in 1912—No special provision for Jewish registered shopkeepers—Subsequent legislation providing alternative early closing day for Jewish shops—Effect of order—Shops Act 1950, ss 1(2), 53(13), 76(2). **Miller's Cash Stores Ltd v West Ham Corpn** [1955] 3 282, QBD.

Mixed shop—Closing order for different days for different trades—Shops Act 1950, s 1(2). **Fine Fare Ltd v Brighton County Borough Council** [1959] 1 476, QBD.

Mixed shop—Supermarket—Exemption order exempting shop of specified classes from early closing—Commodities sold by supermarket included some of those sold by shops of classes specified in order—Whether supermarket was entitled to exemption from early closing in respect of the sale of commodities sold by shops within the exemption order—Shops Act 1950, ss 1, 13(1). **London Borough of Redbridge v Wests (Ilford) Ltd** [1968] 1 277, QBD.

Exemption—

Sale of newly-cooked provisions for consumption off the premises—Sale of newly-baked bread after permitted hours—Whether newly-baked bread within the exemption of 'newly-cooked provisions'—Shops (Hours of Closing) Act 1928, ss 1, 8, Sch I, para 1(b). **London County Council v Davis** [1938] 2 764, KBD.

Mixed shop—

Supermarket—Closing order referring to specified classes of shops and specified trades—Multiplicity of supermarket's trades included some of trades specified in closing order—Whether closing order applied to supermarket—Shops Act 1950, ss 8, 13(3). **Fine Fare Ltd v Aberdare Urban District Council** [1965] 1 679, QBD.

Retail trading elsewhere than in shop—

Place where retail trade or business carried on—Costermonger's barrow—Sale of goods in street from barrow after closing hour—Whether retail trade or business carried on in barrow or on piece of ground where barrow stood—Shops Act 1950, s 12. **Kahn v Newberry** [1959] 2 202, QBD.

Jewish shop. *See* Hours of closing—Early closing day, *ante*.

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Coin operated—

Sunday closing. *See* Sunday closing—Premises to be closed for the serving of customers—Serving of customers—Coin-operated launderette, *post*.

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Sale. *See* **Medicine** (Sale by retail—Shop).

Mixed shop—

Early closing. *See* Hours of closing—Early closing day—Mixed shop, *ante*.

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Sunday closing. *See* Sunday closing—Retail trading elsewhere than in shop—Mobile van equipped as shop, *post*.

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Display of notice stating purpose for which shop open on Sunday. *See* Sunday closing—Shop where several trades or businesses carried on—Display of notice stating purpose for which shop open, *post*.

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Breach of statutory duty. *See* **Master and servant** (Duty of master—Office, shops and railway premises).

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Sunday closing—

Exemption—

Sale of meals and refreshments—Sale of bread on Sunday—'Meals or refreshments'—Shops (Sunday Trading Restriction) Act 1936, ss 1, 2, Schs I, para 1(b), II. **Wardale v Binns** [1946] 2 100, KBD.

Sale of meals or refreshments—Sale of chocolate éclairs, cream buns, jam tarts, fruit cake, swiss roll and veal-and-ham pies—Whether 'meal or refreshment'—Shops (Sunday Trading Restriction) Act 1936, s 1, Schs I, II. **London County Council v Lees** [1939] 1 191, KBD.

Garage—

Lawful opening for sale of motor or cycle supplies or accessories—Information given about motor cars to potential customer—Isolated transaction—Whether garage open in contravention of Shops Act 1950, s 47. **Monaco Garage Ltd v Watford Borough Council** [1967] 2 1291, QBD.

Lawful opening for sale of petrol, oil and motor accessories—Information given about motor cars—Trial run in car—Whether garage open in contravention of Shops Act 1950, s 47. **Waterman v Wallasey Corpn** [1954] 2 187, QBD.

Premises to be closed for the serving of customers—

Serving of customers—Coin-operated launderette—Open on Sunday—Cleaner employed by business owners to clean launderette—Wife of director restocked general vending machine—No other person present on behalf of owners—Whether there was a 'serving of customers' on Sunday—Serving of customers meant personal serving of customers—Shops Act 1950, ss 47, 74(1). **Ilford Corpn v Betterclean (Seven Kings) Ltd** [1965] 1 900, QBD.

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Exhibition stalls—Stalls forming part of exhibition to which public having access—Primary purpose of exhibition to enable stallholders to exhibit wares to those interested—Public admitted to exhibition on payment of entrance fee—Exhibition open on Sundays—Stallholders selling goods from stalls on Sundays—Whether stalls 'places' where retail trade or business carried on—Shops Act 1950, ss 47, 58. **Randall v D Turner (Garages) Ltd** [1973] 3 369, QBD.

Market stalls—Degree of permanency—Market held on Sundays only—Stalls erected each Saturday and dismantled after trading on Sunday—Components of stalls not necessarily same each week—No space marked out on market site where stall to be erected each week—Whether stalls having sufficient degree of permanency to constitute places where any retail trade or business carried on—Shops Act 1950, ss 47, 58. **Maby v Warwick Borough Council** [1972] 2 1198, QBD.

Mobile van equipped as shop—Sale of goods in street from van—Whether van a shop—Whether retail trade or business carried on in van—Whether portion of street at which van stationary a 'place' where retail trade or business is carried on—Shops Act 1950, ss 58, 74(1). **Stone v Boreham** [1958] 2 715, QBD.

Warehouse—Whether warehouse a 'shop' for retail trade or business—Whether warehouse a 'place' for retail trade—Whether box-tricycle a 'place' for retail sale of ice-cream—Shops (Sunday Trading Restriction) Act 1936, ss 11, 12, 13. **Eldorado Ice Cream Co Ltd v Clark** [1938] 1 330, KBD.

Shop where several trades or businesses carried on—

Display of notice stating purpose for which shop open—Whether failure to display notice stating purpose for which shop is open is offence under Shops Act 1950, s 50 or s 47—Shops Act 1950, ss 47, 50, 53, 55, 57. **Tonkin v Raven** [1958] 3 374, QBD.

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Discrimination—

Race—Person not of negro African descent born in Sierra Leone acquiring citizenship at time of independence—Amendment of Constitution retrospectively to limit citizenship to persons of negro African descent—Discrimination on ground of race—Sierra Leone (Constitution) Order in Council 1961 (S I 1961 No 741), Sch 2, ss 1, 23, 43. **Akar v Attorney-General of Sierra Leone** [1969] 3 384, PC.

Legislation—

Special manner and form—Endorsement on Act by Clerk of House of Representatives—Act endorsed that it had been passed but no reference made to special manner and form—Whether to be inferred that not passed in accordance with special manner and form. **Akar v Attorney-General of Sierra Leone** [1969] 3 384, PC.

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Harbour board—Action under power to carry on trade of wharfingers and warehousemen—Trade not subsidiary to main purpose of managing and controlling harbour—Straits Settlements Public Authorities Protection Ordinance (Revised Laws 1936, s 2(2)(as amended by Public Authorities Protection (Amendment) Ordinance 1939, s 2)—Limitation Act 1939, s 21(1). **Firestone Tire and Rubber Co (SS) Ltd v Singapore Harbour Board** [1952] 2 219, PC.

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RSC Ord 25, r 5. **Re Lewis's Declaration of Trust** [1953] 1 1005, ChD.

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Defendant represented as holding title held by plaintiff—Whether action for slander of title would lie if malice proved. **Serville v Constance** [1954] 1 662, ChD.

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Solicitor acting as attorney for client in prison—Bankruptcy of client—Denial by solicitor of receipt of money on particular transactions—Procedure for enquiry—RSC Ord 52, r 25—Bankruptcy Act 1914, s 25(c). **Re A Debtor (No 472 of 1950)** [1958] 1 581, CA.

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Client insisting on taxation—Detailed bill taxed at sum greater than lump sum—Right of solicitor to recover amount of taxed bill—Solicitor's Remuneration (Gross Sum) Order 1934 (S R & O 1934 No 548). *Re* **Taxation of Costs, Re Solicitors** [1942] 2 499, CA.

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Contentious business—

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Oral agreement extending to both contentious and non-contentious business—Retainer of solicitor by trade union at a salary—Solicitor employed for union's accident cases and some other legal work—Solicitor later acted for union in their own contentious business—Money in hands of solicitor when his retainer terminated—Whether solicitor liable to account for profit costs received from opponents in accident cases—Whether solicitor entitled to profit costs for union's own litigation—Whether union could rely on oral agreement—Solicitors Act 1957, ss 34, 57, 59—Solicitors' Practice Rules 1936 (S R & O 1936 No 1005), r 3. **Electrical Trades Union v Tarlo** [1964] 2 1, ChD.

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Fee payable only in event of party being successful in action—Contingency fees in general unlawful as being contrary to public policy—Exceptions—Company—Minority shareholder's action—Action in shareholder's own name—Action to redress wrongs against company committed by majority shareholder—Action in substance a representative action—Liability of minority shareholder to heavy costs—Right of indemnity against company—Whether contingency fee agreement between minority shareholder and legal advisers permissible. **Wallersteiner v Moir (No 2)** [1975] 1 849, CA.

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Solicitor instructed by liquidator of company to obtain counsel's opinion whether certain proceedings should be taken—No proceedings taken—Lump sum bill delivered—Supreme Court of Judicature (Consolidation) Act 1925, s 225—Solicitors Act 1957, s 86(1)—Solicitors' Remuneration Order 1883, art 2, Sch 2. *Re* **Simpkin Marshall Ltd** [1958] 3 611, ChD.

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Medical report—Refusal to disclose. **Vose v Barr** [1966] 2 226, Assizes.

Non-contentious business—

Agreement for payment of gross sum—Mistaken statement by solicitor as to basis on which remuneration could be calculated—Right of client to an order for delivery of itemised bill and taxation of bill—Solicitors Act 1957, s 57(4). **Rutter v Sheridan-Young** [1958] 2 13, CA.

Application for taxation six years after payment—Discretion of court to order delivery of bill—Solicitors Remuneration Act General Order 1882, cl 2(a), cl 2(c)—Solicitors Act 1932, ss 64, 66—Solicitors' Remuneration (Gross Sum) Order 1934 (S R & O 1934 No 548), art 1. *Re* **A Solicitor, Re Taxation of Costs** [1947] 1 369, ChD.

Application to transfer taxation of bill of costs to district registry—Jurisdiction of court to order transfer—Jurisdiction of district registrar to act as taxing master—R RSC Ord 35, r 6A, 17. *Re* **a Solicitor, Re Taxation of Costs** [1944] 1 523, ChD.

SOLICITOR (cont)**Costs (cont)—****Non-contentious business (cont)—**

Gross sum—Charge of gross sum including disbursements—Discretion of court to order delivery of detailed bill—Solicitors Act 1932, ss 64, 66—Solicitors' Remuneration (Gross Sum) Order 1934 (S R & O 1934 No 548), art 1. **Re a Solicitor, Re Taxation of Costs** [1953] 2 23, CA.

Oral agreement to charge less than scale fees—Solicitors Act 1932, s 57(3). **Re a Solicitor** [1955] 3 305, QBD.

Paid bill—

Taxation. *See* **Costs** (Taxation—Solicitor—Paid bill).

Payment by solicitor personally—

Divorce—Intervention by Queen's Proctor. *See* **Divorce** (Intervention—Queen's Proctor showing cause why a decree nisi should not be made absolute—Costs—Fault by solicitors).

Generally. *See* **Payment of costs by solicitor personally, post**.

Legal aid—Order that solicitor of other party pay assisted person's costs—Charge for benefit of legal aid fund—Discretion to allow damages or costs to be set-off against other damages or costs. *See* **Legal aid** (Costs—Charge on property recovered for deficiency of costs—Set-off—First charge for benefit of legal aid fund—Discretion to allow damages or costs to be set-off against other damages or costs—Order that solicitors of other party personally pay assisted person's costs).

Professional conduct—

Petitioner's solicitor interviewing respondent to obtain confession of adultery—Exclusion of these costs from order for costs on granting decree nisi—Whether a judicial exercise of discretion—Need to show that costs unnecessarily incurred—RSC Order 65, r 11, **Davies v Davies** [1960] 3 248, CA.

Recovery—

Action to recover—Letter accompanying bill 'signed by solicitor'—Use of rubber stamps—Signature in name of firm by sole member—Solicitors Act 1932, s 65(2) (i). **Goodman v J Eban Ltd** [1954] 1 763, CA.

Solicitor administrator—

Sole administrator—Insolvent estate—Profit costs of preparing petition for administration in bankruptcy and of preparing and lodging accounts. **Re Worthington (decd)** [1954] 1 677, ChD.

Taxation—

Allowance in excess of statutory maximum. *See* **Costs** (Taxation—Discretion—Allowance of amount in excess of maximum prescribed by scale of costs—Preparation of case by solicitors).

Generally. *See* **Costs** (Taxation—Solicitor).

Transfer of registered land on sale. *See* **Land registration** (Costs—Transfer of registered land).

Withdrawal of delivered bill—

Jurisdiction to permit. **Polak v Winchester (Marchioness)** [1956] 2 660, CA.

Country solicitor attending hearing in London—

Allowance of costs on taxation. *See* **Costs** (Taxation—Party and party—Proper costs—Solicitor's expenses—Country solicitor attending hearing in London).

Criminal proceedings—**Legal aid—**

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Breach of contract—Mental distress. *See* **Contract** (Damages for breach—Mental distress—Solicitor).

Measure of damages against solicitor. *See* **Breach of duty—Client's action founded in contract—Measure of damages, ante**.

Defamation—

Privilege against liability for defamation. *See* **Disciplinary proceedings—Disciplinary committee—Privilege against liability for defamation, post**.

Delegation of responsibility—

Professional misconduct. *See* **Disciplinary proceedings—Professional misconduct—Delegation of responsibility, post**.

Disciplinary proceedings—**Appeal—**

Grounds for variation of order by Divisional Court—Conduct unbefitting a solicitor—Indecent assault—Solicitor's name ordered to be struck off roll—Solicitors Act 1932, s 8—Solicitors (Disciplinary Appeals) Rules 1942 (S R & O 1942 No 1832), r 8. **Re a Solicitor** [1956] 3 516, QBD.

Order to strike name off roll—Refusal of Disciplinary Committee to suspend publication of findings pending appeal—Provision under rules for suspending order—Whether court has inherent jurisdiction or prevent publication—Solicitors (Disciplinary Proceedings) Rules 1942 (S R & O 1942 No 1831), r 29(1). **Re A Solicitor** [1944] 2 432, KBD.

Power of appellate court to lift suspension order when purpose accomplished—Failure of solicitor to keep account books in proper form—Solicitor ordered by disciplinary committee to be suspended from practice for six months—Purpose of order to enable submission of accountant's report covering relevant period—Appeal to Court of Appeal—Accountant's certificate for relevant period before Court of Appeal—Certificate showing that no deficiency on clients' account—Court of Appeal entitled to lift suspension order although order by disciplinary committee justified—Court instead ordering solicitor to pay all Law Society's costs in proceedings. **Re a Solicitor** [1972] 2 811, CA.

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Disciplinary proceedings (cont)—

Appeal (cont)—

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Applicant in person—

Allegations of professional impropriety—Applicant not present before committee—Order by committee dismissing application—Appeal to the Divisional Court—Appellant not represented by counsel—Refusal by Divisional Court to hear the appeal—Solicitors Act 1932, s 8. **Re Two Solicitors** [1937] 4 451, CA.

Disciplinary committee—

Privilege against liability for defamation—Solicitors Act 1957, s 46—Solicitors (Disciplinary Proceedings) Rules 1957 (S I 1957 No 2240), r 21. **Addis v Crocker** [1960] 2 629, CA.

Order for suspension—

Name remaining on roll of solicitors—Use of description 'solicitor' while not practising certificate in force—Whether intention to imply that qualified to act as solicitor—Solicitors Act 1932, s 46. **Taylor v Richardson** [1938] 2 681, KBD.

Professional misconduct—

Accident cases—Instructions from organisation making claims in accident cases—Failure of solicitor to make reasonable inquiry before accepting instructions—Suspension of solicitor from practice for two years—Solicitors Act 1932, s 8—Solicitors Act 1933, s 1—Solicitors' Practice Rules 1936 (S R & O 1936 No 1005), r 4(c). **Re a Solicitor** [1945] 1 445, CA.

Delegation of responsibility—Failure to keep clients' account books properly written up—No misuse of clients' funds—No money missing from clients' funds—Accountant employed by solicitor failing to write up books—Accountant wrongly certifying that accounts rules complied with—Inspection by Law Society's accounts rules complied with—Inspection by Law Society's accountant in 1970 revealing books not written up since 1967—Solicitor failing to put books in order thereafter or when proceedings taken against him before disciplinary committee—Solicitor guilty of professional misconduct because of reprehensible failure and delay—Solicitor not entitled to escape responsibility for breach of accounts rules because books were handed over to accountant—Solicitors' Accounts Rules 1967, r 11. **Re A Solicitor** [1972] 2 811, CA.

Matter not appropriate for consideration by trial judge—Divorce—Petitioner's solicitor interviewing respondent and taking written confession of matrimonial misconduct—Whether conduct unprofessional. **Davies v Davies** [1960] 3 248, CA.

Sentence—

Conduct unbefitting a solicitor, not being professional misconduct—Insulting behaviour—Previous convictions for indecent assault—Solicitor's name struck off the roll—Suitability of sentence. **Re A Solicitor** [1960] 2 621, QBD.

Solicitor taking gift under will of client—

Client not separately advised before making will—Solicitor charged with conduct unbefitting solicitor—Solicitor struck off by disciplinary committee on ground that he was bound to forego benefit unless client separately advised—Whether standard imposed by committee too strict—Whether penalty too severe. **Re a Solicitor** [1974] 3 853, QBD.

Dishonesty—

Misappropriation of means—

Intention to repay—Fees received by solicitor for counsel and shorthand-writers misappropriated by him for his own benefit and use—Gross dishonesty admitted but intention ultimately to pay asserted—Whether an offence under Larceny Act 1916, s 20(1)(iv)(b)—Solicitors Act 1957, s 66—Solicitors' Accounts Rules 1945 (S R & O 1944 No 781), r 9(2). **R v Yule** [1963] 2 780, CCA.

Divorce suit—

Lien. *See* Lien—Retaining lien—Divorce suit, *post*.

Documents—

Preparation by unqualified person. *See* Unqualified person—Preparation of documents etc, *post*.

Duty—

Advice to partnership—

Duty only to advise partner who has matter in hand on behalf of partnership. **Sykes v Midland Bank Executor & Trustee Co Ltd** [1970] 2 471, CA.

Appeal from county court—

Provision of note of county court judgment. *See* County court (Appeal—Note of county court judgment—Provision of note).

Cause list. *See* Practice (Trial—Cause list—Solicitor's duty).

Conflict of duty and interest—

Solicitors executors of their mother's will—Whether under duty to impeach extension of lease of her freehold property to them directed by her will—Reversion devised to their sisters—Lease on advantageous terms. **Re Wells (decd)** [1967] 3 90, ChD.

Solicitor trustee—Breach of trust—Preference to own interest at expense of beneficiary—Non-disclosure of interest—Duty to illiterate persons. **Grahame v Attorney-General of Fiji** [1936] 2 992, PC.

Conflict of interest—

Entry of appearance—Authority to enter appearance not affected by alleged conflict of interests. **Keys v Boulter** [1971] 1 289, CA.

Discovery—

Ensuring that client understands obligation to give discovery. *See* Discovery (Duty of solicitor—Ensuring that clients appreciate their duty in regard to disclosure on discovery).

Divorce—

Disclosure of adultery by petitioner. *See* Divorce (Disclosure of adultery by petitioner—Duty of solicitor).

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Duty (cont)—

Duty to court—

Negotiating settlement of claims to damages, etc. **Jakeman v Jakeman and Turner** [1963] 3 889, Div.

Knowledge—

Case not reported in any major series of law reports. **Pearson v Pearson (Queen's Proctor showing cause)** [1969] 3 323, Div.

Litigation—

Action arising out of car accident—No duty on defendants' solicitor to interview passenger in plaintiff's car, presumably friend of plaintiff and possibly potential claimant against defendants. **Roe v Robert McGregor and Sons Ltd** [1968] 2 636, CA.

Performance—

Guidance by courts—Locus standi of Law Society. *See Practice* (Parties—Law Society—Proceedings in which court giving guidance to solicitors in performance of their duties).

Entry of appearance—

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Conflict of interests. *See Duty—Conflict of interests—Entry of appearance, ante.*

Exchange of contracts—

Same solicitor acting for both parties. *See Sale of land* (Exchange of contracts—Same solicitor acting for both parties).

Expenses—

Country solicitor attending hearing in London. *See Costs* (Taxation—Party and party—Proper costs—Solicitor's expenses—Country solicitor attending hearing in London).

Fees—

Legal aid—

Taxation of costs. *See Legal aid* (Taxation of costs—Counsel's and solicitor's fees).

Fraudulent conversion. *See Criminal law* (Fraudulent conversion—Solicitor).

Gift by client to solicitor—

Residuary bequest by testatrix to her solicitor in will prepared by him—

Knowledge and approval of testatrix—Burden of proof on solicitor to prove that testatrix knew and approved the contents of the will in so far as it benefited him—No independent advice to client—Duty of judge in summing-up to scrutinise vigilantly to the jury the evidence supporting the bequest. **Wintle v Nye** [1959] 1 552, HL.

Goodwill attaching to office premises—

Compensation—

Trade or business—Agencies for insurance companies and building societies—Relevant goodwill. **Stuchbery & Son v General Accident Fire and Life Assurance Corp'n Ltd** [1949] 1 1026, CA.

Guarantees—

Ordinary activity of practice. *See Practice—Guarantees—Ordinary activity of practice, post.*

Inspection of books of account, bank pass books, vouchers etc—

Law society's power to require solicitor to produce books for inspection. *See Clients' account—Inspection of books of account, bank pass books, vouchers etc—Law Society's power to require solicitor to produce books for inspection, ante.*

Insurance—

Professional indemnity insurance. *See Insurance* (Liability insurance—Professional indemnity insurance—Solicitor).

Intestacy—

Administration of solicitor's estate. *See Intestacy* (Grant of administration—Solicitor's estate).

Land registry official searches—

Unqualified person. *See Unqualified person—Preparation of documents etc—Land registry official searches, post.*

Legal aid—

Failure to give notice of legal aid certificate. *See Payment of costs by solicitor personally—Failure to give notice of legal aid certificate, post.*

Legal professional privilege—

Civil proceedings. *See Discovery* (Legal professional privilege).

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Trustee—

Constructive trustee—Moneys on account of costs come to hands of defendant's solicitors for conduct of defence in action—Claim by plaintiff in that action that defendant trustee of all its assets for plaintiff—Separate action by plaintiff claiming that solicitor accountable to it for moneys received on account of costs from defendant in main action—Solicitors' knowledge of claim in main action—Liability of solicitors to account as constructive trustees to plaintiff. **Carl-Zeiss-Stiftung v Herbert Smith & Co (a firm) (No 2)** [1969] 2 367, CA.

Libel of solicitor—

Letters by member of Parliament sent to Law Society and Lord Chancellor—

Qualified privilege. *See Libel and slander* (Qualified privilege—Duty and interest—Member of Parliament).

Lien—

Money in client account—

Charging order—Plaintiff awarded decree of specific performance subject to payment of money to defendant—Property recovered or preserved through solicitor's instrumentality—Solicitors Act 1932, s 69. **Loescher v Dean** [1950] 2 124, ChD.

Money payable on compromise of actions—

No application for charging order—Garnishee order nisi made in favour of client's judgment creditor—Creditor's right to have order made absolute—Solicitors Act 1932, s 69—RSC Ord 45, r 5. **James Bibby Ltd v Woods (Howard, Garnishee)** [1949] 2 1, KBD.

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Lien (cont)—

Mortgage—

Solicitor acting for mortgagor and mortgagee—Title deeds in custody and control of solicitor—Mortgagor owing to solicitor costs of transaction—Death of mortgagee—Solicitor one of the executors—Redemption action—Claim for lien raised by solicitor—*Jus tertii*—Order asked for premature. **Barratt v Gough-Thomas** [1945] 2 650, CA.

Retaining lien—

Divorce suit—Whether petitioner's solicitor entitled to absolute or qualified lien. **Hughes v Hughes** [1958] 3 179, CA.

Statutory lien or charging order—

Funds in court to credit of partnership action—Extent of charge—Form of order—Solicitors Act 1932, s 69. **Kay v Lovell** [1940] 3 89, ChD.

Order for costs only 'property recovered'—No distinction between order made on originating summons and any other order—Discretion of court to refuse order—Solicitors Act 1932, s 69. **Re Blake** [1945] 1 1, CA.

Property sold in administration action—Proceeds paid into court—Extent of charge—Whether order limited to costs incurred in recovery of property—Solicitors Act 1932, s 69. **Re Clayton** [1940] 2 233, ChD.

Title deeds—

Preservation of lien after voluntary parting with possession of deeds—Deeds originally deposited with solicitors instructed by vendor to act in sale of property—Vendor changing solicitors—New solicitors asking original solicitors for deeds—Original solicitors' charges unpaid—Original solicitors handing over deeds subject to reservation that deeds held to their order pending payment of the outstanding charges—New solicitors refusing to accept reservation—Whether unilateral reservation sufficient to preserve original solicitors' lien. **Caldwell v Sumpters (A Firm)** [1972] 1 567, CA.

Title deed and mortgage deed—

Solicitor acting for mortgagor and mortgagee—Deeds in custody of solicitor—Death of mortgagee—Solicitor co-executor—Transfer of mortgage to solicitor—Redemption—Right of solicitor to retain deeds. **Barratt v Gough-Thomas** [1950] 2 1048, CA.

Litigation—

Delay in issuing and serving writ—

Prejudice to client's claim to interest on damages—Liability of solicitor to client. **Jones v Jones** [1970] 3 47, CA.

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Production of documents—

Documents relating to action brought in name of applicant—Agreement giving insurance company absolute conduct and control of proceedings. **Re Crocker** [1936] 2 899, ChD.

Managing clerk—

Conduct of case left to managing clerk—

Payment of costs by solicitor personally. *See* Payment of costs by solicitor personally—Conduct of case left to managing clerk, *post*.

Matrimonial proceedings—

Decree granted in absence of party—

Personal liability of solicitor for costs. *See* Payment of costs by solicitor personally—Matrimonial proceedings—Decree granted in absence of party, *post*.

Medical report—

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Misconduct or neglect—Costs. *See* Costs—Misconduct or negligent—Medical report—Refusal to disclose, *ante*.

Misappropriation of means. *See* Dishonesty—Misappropriation of means, *ante*.

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Action on motor insurance policy—

Solicitor giving effect to pooling arrangement among insurance companies. **Groom v Crocker** [1938] 2 394, CA.

Cause of action—

Contract or tort. **Clark v Kirby-Smith** [1964] 2 835, ChD.

Damages—

Action not brought within limitation period—Action under Fatal Accidents Acts. **Kitchen v Royal Air Forces Assn** [1958] 2 241, CA.

Client's action founded in contract—Measure of damages. **Bailey v Bullock** [1950] 2 1167, KBD.

Conveyance of building—Vendor's solicitor retained by purchaser—Discovery that plans of building not approved by local authority—Purchaser not informed. **Lake v Bushby** [1949] 2 964, KBD.

Measure of damages. *See* Damages (Measure of damages—Negligence—Solicitor).

New tenancy of business premises—Landlord's notice to quit stated intention not to oppose new tenancy—Solicitor instructed to apply for new tenancy—Failure to give notice of tenant's unwillingness to give up possession—No evidence from which value of any new tenancy granted could be estimated—Nominal damages only. **Clark v Kirkby-Smith** [1964] 2 835, ChD.

Purchase of freehold property by client—Defect in title—Damages recoverable by client—Duty to minimise loss. **Pilkinton v Wood** [1953] 2 810, ChD.

Sale of land—Exchange of contracts by purchasers' solicitors without sufficiently satisfying themselves that there were no building restrictions on land purchased—Vacant land in fact subject to such restrictions—Market value of land subject to restrictions equivalent to price paid by purchasers—Whether damages nil. **Ford v White & Co** [1964] 2 755, ChD.

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Negligence (cont)—

Damages (cont)—

Sale of land—Requisition answered in accordance with general conveyancing practice—Purchaser thereby enabled to refuse to complete and to recover deposit—Opportunity for re-sale pending trial of action for return of deposit—Advice against re-sale—Premises subsequently damaged by fire—Remoteness of damage. **Simmons v Pennington & Son (a firm)** [1955] 1 240, CA.

Tenant in tail—Failure to advise disentailment—Death of tenant in tail—Diminution of estate—Damages recoverable by personal representative of tenant in tail. **Otter v Church, Adams, Tatham & Co (a firm)** [1953] 1 168, ChD.

Will—Solicitor instructed to draft wills for two clients, man and woman, wishing to confer benefits on each other—Failure to advise clients in regard to revocation of wills on marriage—Marriage of clients after wills executed—Damage suffered by wife on death of husband intestate—Remoteness of damage—Measure of damages. **Hall v Meyrick** [1957] 2 722, CA.

Inadequate advice—

Solicitor consulted by injured workman in respect of accident—Advice as to workmen's compensation—Failure to advise in respect of common law rights. **Griffiths v Evans** [1953] 2 1364, CA.

Litigation—

Acts or omissions in conduct of litigation—Whether an action for negligence can lie against a solicitor in regard to acts or omissions in litigation which, if counsel had been engaged, would have been within the province of counsel. **Rondel v Worsley** [1967] 3 993, HL.

Registration of club—

Failure to notify client of refusal of registration. **Ashton v Wainwright** [1936] 1 805, KBD.

Sale of dwelling-house—

Solicitor acting both for vendor and for purchaser—Duty to ascertain standard rent. **Goody v Baring** [1956] 2 11, ChD.

Sub-lease—

Duty of potential sub-lessee's solicitor to inspect head lease to ascertain covenants affecting premises. **Hill v Harris** [1965] 2 358, CA.

Non-contentious business—

Costs. *See* Costs—Non-contentious business, *ante*.

Retainer. *See* Retainer—Non-contentious business, *post*.

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Hearing before Official Referee—

Appeal—Substitution of note taken by solicitors for official referee's note. *See* Court of Appeal (Judge's note—Substitution of note taken by solicitors—Appeal from official referee).

Notice—

Signature—

Sufficiency of solicitor's signature to notice to terminate a licence on behalf of company, which itself was an agent. *See* Licence (Notice to terminate occupation).

Payment of costs by solicitor personally—

Application for solicitor to pay costs personally—

Summary jurisdiction—Solicitor ceasing to be on the record—Form of application—Solicitors Act 1932, s 5(1). **Brendon v Spiro** [1937] 2 496, CA.

Conduct of case left to managing clerk—

Inadequate affidavits of documents—False to knowledge of clerk—Whether solicitor can be made personally responsible for costs. **Myers v Elman** [1939] 4 484, HL.

Crown Court—

Jurisdiction to order solicitor personally to pay costs occasioned by his negligence. **R v Smith (Martin)** [1974] 1 651, CA.

Error in estimate of length of trial—

Transfer of case from short non-jury list to long non-jury list—RSC Ord 36, r 29(6). **Ibbs v Holloway Bros Ltd** [1952] 1 220, KBD.

Failure to give notice of legal aid certificate—

Failure due to mere oversight—Judgment in favour of unassisted party—Liability of solicitors for costs—Whether costs improper or wasted—Legal Aid (General) Regulations 1962 (S 1 1962 No 148) reg 16(2)—RSC Ord 62, r 8. **Mauroux v Sociedade Comercial Abel Pereira da Fonseca SARL** [1972] 2 1085, ChD.

Failure to watch cause list—

No attendance in court, personally or by counsel, when case called on. **Practice Note** [1962] 1 768, QBD.

Improper continuance of proceedings—

Change of position on discovery—Irrelevance of civil aid certificate—RSC Ord 65, r 11—Legal Aid and Advice Act 1949, s 1(7)(b). **Edwards v Edwards** [1958] 2 179, Div.

Matrimonial proceedings—

Decree granted in absence of party. **Wilkinson v Wilkinson** [1962] 1 922, CA.

Disregard of client's instructions to contest damages—Costs wasted by default—Supreme Court Costs Rules 1959, r 8(1). **Jakeman v Jakeman and Turner** [1963] 3 889, Div.

Letters sent to wrong address—Costs wasted by default—Supreme Court Costs Rules 1959, r 8(1). **D v D** [1963] 1 602, Div.

Maintenance order made in husband's absence. **Kaye v Kaye** [1964] 1 628, Div.

Removal of case from cause list—

Failure to notify Crown Office of order involving removal of case from cause list. **Williamson v British Boxing Board of Control** [1958] 2 228, QBD.

Setting aside order—

Order set aside in absence of notice of complaint and opportunity to answer it—Supreme Court Costs Rules 1959, r 8(1) (c), (2). **Abraham v Jutsun** [1963] 2 402, CA.

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Payment of costs by solicitor personally (cont)—

Want of authority to institute action—

Action in name of foreign corporation—Corporation domiciled in Eastern Zone of Germany—

Law applicable to determine authority to sue. **Carl-Zeiss-Stiftung v Rayner and Keeler Ltd (No 2)** [1966] 2 536, HL.

Practice—

Advocate—

Duty in regard to taking doubtful points of law. **Abraham v Jutsun** [1963] 2 402, CA.

Liability in negligence—Whether an action for negligence as an advocate can lie against a solicitor. **Rondel v Worsley** [1967] 3 993, HL.

Right of audience—Crown Court. **Practice Direction** [1972] 1 144, 608.

Defence certificate—

Right to undertake necessary work in giving notice of appeal or application for leave to appeal after conviction recorded—Poor Prisoners' Defence (Defence Certificate) Regulations 1960 (S I 1960 No 260), reg 6. **R v Mullins** [1962] 3 237, CCA.

Guarantees—

Ordinary activity of practice—Whether giving of temporary guarantees to clients was ordinary activity of practice of solicitor. **Jennings (Inspector of Taxes) v Barfield & Barfield** [1962] 2 957, ChD.

Rent assessment committee—

Effect of membership of panel on practice of solicitor before committee or rent officer.

Metropolitan Properties Co (FGC) Ltd v Lannon [1968] 3 304, CA.

Practising certificate—

Articled clerk. *See* Articled clerk—Qualification for solicitor to take, *ante*.

Retrospective effect to 16th November where taken out before 16th December—

Lack of qualification to practise during interval between 16th November and date of issue if certificate issued after 15th December. **Adlam v The Law Society** [1968] 1 17, ChD.

Privilege—

Legal professional privilege. *See* **Discovery** (Legal professional privilege).

Privilege against liability for defamation. *See* Disciplinary proceedings—Disciplinary committee—Privilege against liability for defamation, *ante*.

Production of documents. *See* Litigation—Production of documents, *ante*.

Professional indemnity insurance. *See* **Insurance** (Liability insurance—Professional indemnity insurance—Solicitor).

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Remuneration—

Charging below scale fee—

Solicitor acting for both mortgagor purchaser and mortgagee—Purchaser charged less than scale fee—Solicitors' Remuneration Act General Order 1882, Sch I, Part I, r 6—Solicitors' Practice Rules 1936 (S R & O 1936 No 1005), rr 1, 2(A). **Re a Solicitor** [1951] 2 108, KBD.

Non-contentious business—

Taxation of costs. *See* **Costs** (Taxation—Solicitor—Non-contentious business).

Order prescribing and regulating remuneration for non-contentious business—

Statutory committee—Duty to act fairly—Proposals for major change in method of remuneration—Preparation of draft order—Consultation with outside bodies—Draft required to be sent to the Council of the Law Society—Observations of council to be submitted to statutory committee within one month of receipt—Draft of order abolishing scale fees—Whether when major change proposed period should be extended and representative bodies other than council consulted—Whether draft sent to council should be first approved by committee—Solicitors Act 1957, s 56. **Bates v Lord Hailsham of St Marylebone** [1972] 3 1019, ChD.

Rent assessment committee—

Effect of membership of panel on practice of solicitor before committee or rent officer. *See* Practice—Rent assessment committee, *ante*.

Reputation—

Slander. *See* **Libel and slander** (Slander actionable per se—Solicitor).

Retainer—

Retainer to prosecute a succession of matters—

Entire contract—Termination—Costs. **Warmingtons v McMurray** [1937] 1 562, CA.

Termination of retainer—

Non-contentious business—Legal work in connection with a property development and likely to extend over years—Whether entire contract—Whether retainer terminable by client on notice. **J H Milner & Son v Percy Bilton Ltd** [1966] 2 894, QBD.

Right of audience—

Crown Court. *See* Practice—Advocate—Right of audience—Crown Court, *ante*.

Sale of land—

Acting for vendor and purchaser—

Danger of so acting. **Smith v Mansi** [1962] 3 857, CA.

Negligence. *See* Negligence—Damages—Sale of land, *ante*.

Requisitions on title—

Duty of purchaser's solicitor. *See* **Sale of land** (Requisitions on title—Duty of purchaser's solicitor).

Scale fees—

Charging below scale fee. *See* Remuneration—Charging below scale fee, *ante*.

Oral agreement to charge less than scale fee, *ante*.

Solicitor's estate—

Law Society's nominees. *See* **Probate** (Grant—Solicitor's estate).

Suspension from practice. *See* Disciplinary proceedings, *ante*.

Taxation of bill of costs. *See* **Costs**—Bill for lump sum—Client insisting on taxation, *ante*.

Tenant in tail—

Negligence. *See* Negligence—Damages—Tenant in tail, *ante*.

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Title deeds—

Lien. *See* Lien—Title deeds, *ante*.

Trial—

Error in estimate of length of trial—

Payment of costs by solicitor personally. *See* Payment of costs by solicitor personally—Error in estimate of length of trial, *ante*.

Tribunal—

Whether party entitled to be legally represented before domestic tribunal. *See* Natural justice (Domestic tribunal—Legal representation).

Trust—

Trust documents—

Inspection—Letter of trust's solicitors to the trustees. *Re Londonderry's Settlement* [1964] 3 855, CA.

Trustee—

Remuneration—

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Solicitor trustee—

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No undertaking to apply money in particular way—Solicitor not holding money in own hands—Whether undertaking given in capacity as a solicitor. *Geoffrey Silver & Drake v Thomas Anthony Baines* [1971] 1 473, CA.

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Clerk to local authority—Mortgage deeds for advances under Small Dwellings Acquisition Act 1899, s 1(1)—Right of authority to charge mortgagors—'Fee, gain or reward'—'Public officer'—Solicitors Act 1932, s 47(1)(3)(a)—Local Government Act 1933, s 188(1). *Beeston & Stapleford Urban District Council v Smith* [1949] 1 394, KBD.Directly or indirectly drawing or preparing instruments of transfer or charge—Directly or indirectly preparing—Meaning—Unqualified person carrying out all preparatory work for conveyance—Drafting of transfer or conveyance done by different person—Whether preparatory work amounting to preparation of transfer—Whether preparatory work indirectly preparing transfer—Solicitors Act 1957, s 20(1). *Green v Hoyle* [1976] 2 633, QBD.Estate agent—Lease for fourteen years determinable by tenant at end of any year—Solicitors Act 1932, s 47(1)(4)(b). *Kushner v Law Society* [1952] 1 404, KBD.Land registry official searches—Whether unqualified person can make an application for an official search or for an office copy of a document in relation to land registered under the Land Registration Act 1925—Solicitors Act 1957, s 20(1)(a)—Land Registration Rules (S R & O 1925 No 1093), rr292, 296—Land Registration Rules 1930 (S R & O 1930 No211), r 2. *Carter v Butcher* [1965] 1 994, QBD.Preparation for or in expectation of fee etc—Unqualified person not himself receiving fee etc—Whether identity of person who receives fee relevant—Solicitors Act 1957, s 20(1). *Reynolds v Hoyle* [1975] 3 934, QBD.Rent collector—Particulars of claim in county court actions for arrears of rent—Commission received in respect of all moneys recovered—No specific fee for drawing instrument—Solicitors Act 1932, s 47(1) (as amended by Solicitors Act 1941, s 23(1)). *Pacey v Atkinson* [1950] 1 320, KBD.

Pretending to be a solicitor—

Advertisement containing representation by someone of being recognised by law and qualified to act as solicitor—Advertisement inserted by person intending to carry out the work—Whether wilful pretence—Solicitors Act 1957, s 19. *Carter v Butcher* [1965] 1 994, QBD.Dismissal of information under Probation of Offenders Act 1907—Probation of Offenders Act 1907, s 1(1)—Solicitors Act 1932, s 46—Solicitors Act 1941, s 22, Sch III. *Hall v Jordan* [1947] 1 826, KBD.

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Order made excluding clerk from employment without consent—Jurisdiction of committee to make order—Solicitors Act 1941, s 16(1)(b). **Re a Solicitor's Clerk** [1956] 2 242, QBD.Order excluding clerk from employment without consent—Order made after extension of committee's jurisdiction in respect of conduct before it—Whether disciplinary committee had jurisdiction to make order—Solicitors Act 1941, s 16(1) (as substituted by Solicitors (Amendment) Act 1956, s 11). **Re a Solicitor's Clerk** [1957] 3 617, QBD.**SOLICITOR'S PRACTICE**

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See **Constitutional law** (Foreign sovereign state—Immunity from suit).

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Investment income—

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Dividends on shares acquirable only by employees—Whether investment income within Income Tax Act 1918, s 14(3)(b)—Finance Act 1948, s 49(1). **Recknell v Inland Revenue Comrs** [1952] 2 147, ChD.

Exclusion of income arising to persons carrying on a trade from property occupied by them for the purposes thereof—

Land let to farmer by his wife—Farmer's land occupied by him in partnership—Whether wife's income from the rent to be excluded from investment income—Finance Act 1948, s 49(2)(b). **Worth v Inland Revenue Comrs** [1953] 1 930, CA.

Trustee—

Annuity to trustee conditional on his acting as such—Whether investment income—Income Tax Act 1918, s 14(3)(a)(b)—Finance Act 1948, s 47(1). **Dale v Inland Revenue Comrs** [1953] 2 671, HL.

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A full year's income—Discretion of commissioners in selecting relevant year—Finance Act 1948, s 61(1). *Fenwick v Inland Revenue Comrs* [1953] 2 666, HL.

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Jurisdiction of county court. *See* **County court** (Jurisdiction—Specific performance—Agreement to erect fence).

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Enforcement by third party as personal representative of original party—

Original party entitled to nominal damages only—Contract for sale of business—Agreement to pay annuity to widow of seller—Widow not party to contract—Business transferred—Death of seller—Widow obtained letters of administration—Whether widow entitled to enforce payment of annuity specifically. *Beswick v Beswick* [1967] 2 1197, HL.

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Sale of land for development—Covenant by defendant vendor to make sewers and roads on retained land—Retained land in possession of defendant—Whether fact that defendant undertaking work had not thereby obtained possession a bar to specific performance—Whether defendant must by the contract obtain possession of land. *Carpenters Estates Ltd v Davies* [1940] 1 13, ChD.

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Costs—

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Rateable value of property not exceeding £500—Value of property exceeding £500. *Cornish v Brook Green Laundry Ltd* [1959] 1 373, CA.

Agreements for sale, purchase or lease of property—

Agreement to erect fence—Agreement made as compromise of legal proceedings—Whether county court having jurisdiction to enforce agreement—County Courts Act 1934, ss 40, 52(1)(d), 71. *Bourne v McDonald* [1950] 2 183, CA.

SPECIFIC PERFORMANCE (cont)

County court jurisdiction (cont)—

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Defence based on right to specific performance—Value of property such as to exclude county court jurisdiction if plea raised by way of claim—Action for recovery of possession by landlord—Defence of agreement for oral tenancy for life—No counterclaim for specific performance—County Courts Act 1959, ss 52(1)(d), 74. **Kingswood Estate Co Ltd v Anderson** [1962] 3 593, CA.

Damages in addition to specific performance—

Contract for sale of land. *See* **Sale of land** (Damages for breach of contract—Damages in addition to specific performance and abatement of purchase price).

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Sale of land. *See* **Sale of land** (Damages for breach of contract—Damages in substitution for specific performance).

Defence to action—

Breach of conditions of contract by plaintiff—

Agreement for the operation of a sawmill—Option of purchase in agreement—Option exercised after breaches of agreement and after notice by defendant determining agreement on ground of breaches—Whether specific performance of term of agreement to request transfer of occupation permit and sawmill licence would be granted. **Australian Hardwoods Pty Ltd v Comr for Railways** [1961] 1 737, PC.

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Right of pre-emption offered but not exercised—Twenty-one year option exercised subsequently—Whether specific performance would be granted or plaintiff left to remedy in damages. **Du Sautoy v Symes** [1967] 1 25, ChD.

Illegal contract—

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Illegal premium. *See* **Rent restriction** (Premium—Illegal premium—Specific performance).

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Terms of order—

Interest—Vendor's action—Conveyance and purchase money to be handed over simultaneously. **Palmer v Lark** [1945] 1 355, ChD.

Lapse of time—

Contract for sale of building land—

Purchase to be completed within two years—Plots to be conveyed to purchaser as buildings erected—Purchaser having entered on two plots, no building completed on them for many years—Delay attributable partly to antagonistic conduct of vendor—Action by purchaser for specific performance after ten years—No abandonment of contract. **Williams v Greatrex** [1956] 3 705, CA.

Lease—

Agreement for lease—

Trustees agreeing to take long leases of properties held by subsidiary of development company—Director of development company also one of trustees. **Lindgren v L & P Estates Co Ltd** [1968] 1 917, CA.

Underlease—Execution of underlease breach of covenant in lessor's head lease—Whether lessee entitled to specific performance of agreement to execute underlease. **Warmington v Miller** [1973] 2 372, CA.

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Agreement conferring option on third party—

Exercise of option by third party—Right of third party to order of specific performance of agreement constituted by exercise of option. **Stromdale and Ball Ltd v Burden** [1952] 1 59, ChD.

Document purporting to confer option on plaintiff—

Contractual nature of document—Evidence to prove otherwise inadmissible. **Hutton v Watling** [1948] 1 803, CA.

No time limit for exercise—

Decree against original grantee of option. **Hutton v Watling** [1948] 1 803, CA.

Option granted gratuitously or for token consideration—

Equity will not assist a volunteer—Exercise of option by purchaser—Exercise of option constituting contract of sale for agreed sum—Sum constituting adequate consideration—Refusal of vendor to complete—Whether purchaser entitled to specific performance or confined to remedy in damages. **Mountford v Scott** [1975] 1 198, CA.

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Contract that plaintiff should have deceased's house after his death. *See* **Contract** (Part performance—Oral contract that plaintiff should have deceased's house after his death—Plaintiff gave up her flat and lived with deceased, looking after him and his house—Specific performance of oral contract decreed after deceased's death).

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Judgment in default of appearance. *See* **Practice** (Chancery Division—Order—Order requiring execution of deed—Judgment in default of appearance—Form of order—Specific performance of an agreement to execute lease).

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SPECIFIC PERFORMANCE (cont)

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Promise acted on by plaintiff—

Promise to make settlement—Agreement that as consideration promisor should be made trustee of existing settlement—Promisor tenant for life under existing settlement—Promisor appointed trustee by existing trustee—Appointment an innocent breach of trust—Whether promise enforceable on behalf of beneficiaries under proposed settlement. **Briggs v Parsloe** [1937] 3 831, ChD.

Publishing agreement—

Contract to publish signed article—

Article not written at date of contract—Refusal of publisher to print article as submitted. **Joseph v National Magazine Co Ltd** [1958] 3 52, ChD.

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Goods not specific or ascertained—

Power of court to order specific performance—Circumstances in which power exercisable. **Sky Petroleum Ltd v VIP Petroleum Ltd** [1974] 1 954, ChD.

Sale of land—

Conditional contract—

Promissory note—Document promising to pay money for 'value received' or in default to convey property—Whether conditional contract for sale of land of which specific performance would be decreed. **Savage v Uwechia** [1961] 1 830, PC.

Costs of action—

Accrual of equitable right to specific performance—Writ issued by purchaser—Accrual before date of issue of writ—Time not made essence of contract—Completion week after date writ issued—Whether purchaser entitled to costs. **Marks v Lilley** [1959] 2 647, ChD.

Purchaser's costs of suit—Completion of contract after issue of writ—Whether purchaser entitled to costs. **Horton v Kurzke** [1971] 2 577, ChD.

Purchaser's costs of suit—Lien on property—Deposit paid to stakeholder. **Combe v Swaythling** [1947] 1 838, ChD.

Delay in completion—

Building land—Contract not completed for ten years—Time not made essence of the contract—Specific performance granted. **Williams v Greatrex** [1956] 3 705, CA.

Entry into possession as waiver of objection to title—

Assignment of lease—Default by assignor to repair in compliance with covenant in lease—Entry into possession by assignee—Undertaking by assignor to effect repairs at later date—Assignee refusing to accept undertaking and vacating premises—Whether assignor entitled to specific performance. **Rellie v Pyke** [1936] 1 345, ChD.

Land belonging to company—

Vendor company inaccurately described in conveyance—Characteristics of company for purpose of identification—Whether vendor sufficiently identifiable. **F Goldsmith (Sicklesmere) Ltd v Baxter** [1969] 3 733, ChD.

Land outside jurisdiction—

Contract for sale of land in Scotland—Vendor and purchaser domiciled in England—Vendor seeking specific performance of agreement to buy land in Scotland—Whether court can decree specific performance of contract regarding land outside jurisdiction. **Richard West and Partners (Inverness) Ltd v Dick** [1969] 1 943, CA.

Purchaser in possession—

Acceptance of title—Order to make payment into court—Whether defendant should have option to go out of possession. **Maskell v Ivory** [1970] 1 488, ChD.

Rescission of contract—

Damages. *See* **Sale of land** (Rescission of contract—Damages—Decree of specific performance).

Right of purchaser to maintain action—

Agent of purchaser contracting in own name—Knowledge of agency by vendor—Vendors tenants in common—One vendor having no power to convey interest—Right of purchaser to order against other vendors in respect of their shares. **Abdul Karim Basma v Weekes** [1950] 2 146, PC.

Sale with vacant possession—

Duty of vendor to bring proceedings to obtain possession—Matrimonial home—Vendor's spouse's right of occupation—Right registered as a charge—Husband owner of home—Husband contracting to sell home—Wife subsequently registering right of occupation as a charge—Husband and wife living together—Wife unwilling to leave home—Wife's right of occupation personal to herself—Husband attempting without success to persuade wife short of litigation to remove notice of charge—Purchasers having alternative remedy in damages—Whether husband should be compelled to take proceedings to terminate wife's right of occupation—Whether purchasers entitled to specific performance subject to wife's right of occupation—Matrimonial Homes Act 1967, ss 1, 2. **Wroth v Tyler** [1973] 1 897, ChD.

Tenants in common—

Sale by tenants in common—One vendor having no power to convey—Whether specific performance granted against others. **Abdul Karim Basma v Weekes** [1950] 2 146, PC.

Title—

Contract of sale of freehold land and business assets—Vendor only leaseholder—Ability to compel assurance by freeholder. **Elliott v Pierson** [1948] 1 939, ChD.

Sale of shares in company—

Winding-up order—

Vendor and purchaser entering into contract before commencement of winding-up of company—Vendor claiming specific performance of contract after winding-up order made—Whether contract enforceable—Companies Act 1948, s 227. **Sullivan v Henderson** [1973] 1 48, ChD.

SPECIFIC PERFORMANCE (cont)

Service agreement—

Contract to execute service agreement—

Service agreement not specifically enforceable—Contract containing provision requiring defendants to appoint third party managing director of company for five years—Contract requiring only the performance of single act, i.e. execution of service agreement—Contract specifically enforceable—Immaterial that service agreement as a contract for personal services not specifically enforceable. **C H Giles & Co Ltd v Morris** [1972] 1 960, ChD.

Summary procedure—

Agreement for the sale, purchase or exchange of any property—

Agreement to grant long lease of flat to be erected and to sell residue of term to lessee—Whether agreement for sale or purchase of property—RSC Ord 86, r 1(1). **Young v Markworth Properties Ltd** [1965] 1 834, ChD.

Construction of house—Contract for the sale of house and land for £10,750—Contract conditional on purchaser fulfilling obligations under second contract—Purchaser under second contract agreeing to erect new house for vendor in accordance with plans and specifications—Payment for construction of new house to be satisfied by vendor completing sale under first contract—Vendor refusing to complete sale after new house erected—Whether agreement for the sale or exchange of any property—Whether purchaser entitled on summary judgment to specific performance—RSC Ord 86. **Doyle v East** [1972] 2 1013, ChD.

Money consideration—Sale or purchase—Contract to transfer leasehold property—Absence of money consideration—RSC Ord 14A, r 1. **Robshaw Bros Ltd v Mayer** [1956] 3 833, ChD.

Claim for specific performance or damages in lieu—

Plaintiff electing to claim damages—Agreement to purchase or find a purchaser of shares at a fixed price—RSC Ord 14A (S 1 1954 No 1728), r 1(1). **Woodlands v Hind** [1955] 2 604, ChD.

Construction of documents—

Question whether contract concluded by exchange of letters—No possibility of further facts emerging if case going formally for trial—Power of judge to determine point of construction on summary application—RSC Ord 86. **Bigg v Boyd Gibbins Ltd** [1971] 2 183, CA.

Leave to defend—

Order for examination on oath—Circumstances in which such an order should be made—RSC Ord 86. **Sullivan v Henderson** [1973] 1 48, ChD.

Masters' powers—

Conditions to be satisfied before master gives summary judgment in specific performance action—Formal written agreement—Default of appearance by defendant or no appearance at hearing or clearly no defence—RSC Ord 14A. **Practice Note** [1955] 1 913.

Practice—

Summary judgment for specific performance—Issue to be tried—Interest on purchase money—RSC Ord 14A. **Upjohn v Simmons** [1936] 1 615, ChD.

Purchaser's action—

Transfer of land by vendor to company controlled by him—Transfer a sham—Decree granted against vendor and company—Whether summary procedure appropriate—RSC Ord 14A, r 1. **Jones v Lipman** [1962] 1 442, ChD.

Third party procedure—

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Title—

Doubtful title—

Latent ambiguity of description of beneficiaries in will—Deed of family arrangement to resolve ambiguity—Sale of reversionary interest subject to special conditions—Whether title too doubtful to be forced on purchaser. **Wilson v Thomas** [1958] 1 871, ChD.

Uncertainty as to terms—

Agreement not to bid at auction—

Agreement to convey land bought at auction if plaintiff did not bid—Formula agreed on price payable within certain limits—Failure of defendant to convey—Whether agreement enforceable. **Pallant v Morgan** [1952] 2 951, ChD.

Underlease. *See* Lease—Agreement for lease—Underlease, *ante*.

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Exclusion of spouse from matrimonial home. *See Injunction* (Exclusion of spouse from matrimonial home).

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Voluntary disposition inter vivos—

Conveyance to trustees for sale. *See* Voluntary disposition inter vivos—Conveyance to trustees for sale—Necessity for adjudication, *post*.

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Policy securing half-yearly payments for 11 years on payment of a lump sum—Whether sale of annuity or security for annuity—Stamp Act 1891, s 87(2), Sch 1. **Commercial Union Assurance Co Ltd v Inland Revenue Comrs** [1937] 4 159, KBD.

Assent. *See* Conveyance on sale—Instrument whereby property or estate or interest in property on sale thereof transferred to or vested in purchaser—Assent, *post*.

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Executory agreement creating obligation—Agreement providing for services—Total amount ultimately payable ascertainable—Specified sum subject to increase or decrease in certain eventualities—Stamp Act 1891, Sch 1. **Independent Television Authority v Inland Revenue Comrs** [1960] 2 481, HL.

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Instrument whereby property or estate or interest in property on sale thereof transferred to or vested in purchaser—

Appropriation of stocks and shares in satisfaction of pecuniary legacy—Transfer of stock by executor—Whether instrument of transfer chargeable as 'conveyance on sale'—Administration of Estates Act 1925, s 41. **Jopling v Inland Revenue Comrs** [1940] 3 279, KBD.

Assent—Assent giving effect to sale—Whether chargeable with ad valorem duty as conveyance on sale—Stamp Act 1891, s 54—Administration of Estates Act 1925, s 36(1)(4) (11). **G H R Co v Inland Revenue Comrs** [1943] 1 424, KBD.

STAMP DUTY (cont)

Conveyance on sale (cont)—

Instrument whereby property or estate or interest in property on sale thereof transferred to or vested in purchaser (cont)—

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Deed of exchange—Freehold estate exchanged for leasehold interest in same land—Whether deed chargeable with ad valorem duty as conveyance on sale—Stamp Act 1891, s 54, Sch 1. **Inland Revenue Comrs v Littlewoods Mail Order Stores Ltd** [1962] 2 279, HL.

Option to purchase land—Agreement in writing whereby for a consideration option granted to purchase land—Whether option 'property'—Whether agreement 'conveyance on sale'—Stamp Act 1891, s 54. **George Wimpey & Co Ltd v Inland Revenue Comrs** [1975] 2 45, CA.

Transfer of shares—Agreement granting option to purchase shares and requiring immediate transfer of shares to potential purchaser in trust for vendors pending exercise of option—No transfer of beneficial interest—Subsequent oral exercise of option—Whether transfers chargeable as conveyances on sale—Whether option agreement chargeable as agreement for sale of beneficial interest—Stamp Act 1891, ss 54, 59, Sch 1. **Wm Cory & Son Ltd v Inland Revenue Comrs** [1965] 1 917, HL.

Transfer of shares—Shares subject to settlement—Oral agreement to exchange reversionary interest in settled shares for shares owned by life tenants—Trustees' subsequent transfer of shares to life tenants—Whether conveyance of beneficial interest—Stamp Act 1891, s 54, Sch 1—Law of Property Act 1925, s 53(1)(2). **Oughtred v Inland Revenue Comrs** [1959] 3 623, HL.

Transfer of shares—Transfers executed in blank—Share certificates and transfers delivered to company acquiring the capital on a take-over bid—Shares then devalued by creation of prior ranking shares—Sub-sale to subsidiary company at the low value of devalued shares—Duty charged on the substantial consideration given to the share-holders to whom the take-over bid was made—Stamp Act 1891, s 58(4), Sch 1. **Fitch Lovell Ltd v Inland Revenue Comrs** [1962] 3 685, ChD.

Transfer of stock—Compulsory transfer under statutory provision—Company acquiring nine-tenths of other company's stock—Transfers of dissenting shareholder's stock executed by nominee—Whether transfer chargeable with ad valorem duty as conveyance on sale—Whether transfer on sale—Stamp Act 1891, s 54, Sch 1—Companies Act 1948, s 209. **Ridge Nominees Ltd v Inland Revenue Comrs** [1961] 3 1108, CA.

Periodical payments—

Payments for a definite period exceeding 20 years—Provision for payment of all instalments on default in paying any instalment in due time—Whether charge for stamp duty limited to the aggregate of instalments for 20 years—Stamp Act 1891, s 56(2). **Western United Investment Co Ltd v Inland Revenue Comrs** [1958] 1 257, ChD.

Separate instrument securing payments—Execution of separate instrument prior to conveyance on sale—Whether ad valorem duty chargeable on separate instrument—Stamp Act 1891, s 56(4). **Western United Investment Co Ltd v Inland Revenue Comrs** [1958] 1 257, ChD.

Statement certifying transaction effected not forming part of series of transactions—

Series of transactions—Finance (1909-10) Act 1910, s 73. **Attorney-General v Cohen** [1937] 1 27, CA.

Transfer of shares—

Court order whereby property or estate or interest in property on sale thereof transferred to or vested in purchaser—Scheme of arrangement—Court order—Whether ad valorem stamp duty payable on court order as conveyance or transfer on sale—Stamp Act 1891, s 54, Sch 1. **Sun Alliance Insurance Ltd v Inland Revenue Comrs** [1971] 1 135, ChD.

Debt—

Funded debt. *See* Issue of loan capital—Funded debt, *post*.

Declaration of trust. *See* Voluntary disposition inter vivos—Declaration of trust, *post*.

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Gift—

Voluntary disposition inter vivos. *See* Voluntary disposition inter vivos, *post*.

Guarantee—

Sale agreement. *See* Mortgage, bond, debenture or covenant—Principal or primary security for the payment or repayment of money—Guarantee of sale agreement, *post*.

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Assignment of policy to secure overdraft from bank—

Sufficiency of stamp—Amount recoverable by assignee—Stamp Act 1891, ss 88(2), 118(1). **Re Waterhouse's Policy** [1937] 2 91, ChD.

Interest—

Overpaid duty. *See* Repayment—Interest on overpaid duty, *post*.

STAMP DUTY (cont)

Issue of loan capital—

Ad valorem stamp duty payable on amount proposed to be secured by issue—

Company having unsecured loan stocks protected by trust deeds—Issue by company of equivalent amounts of debenture stocks in place of unsecured loan stocks—New trust deeds protecting debenture stocks—Covenants to repay principal and interest in original trust deeds repeated or reproduced in new trust deed—Provision in new trust deed that covenants for repayment to continue to have effect but other covenants to cease to have effect—Debenture stocks secured by floating charges on assets of company and its subsidiaries and guarantees by subsidiaries—Whether 1967 conversion constituting an issue of loan capital liable to ad valorem duty—Finance Act 1899, s 8. **Associated British Maltsters Ltd v Inland Revenue Comrs** [1972] 3 192, ChD.

Funded debt—

Characteristics of funded debt—Debt having some degree of permanence or long-term character—Unnecessary for debt to be supported by some fund or transferable in separate amounts—Unnecessary for debt to have been created by conversion of existing short-term debt—Company reducing capital by cancelling shares held by another company—Consideration for cancellation creation of debt in favour of other company—Debt of long duration bearing interest at regular intervals—Whether debt a 'funded debt'—Finance Act 1899, s 8(5). **Reed International Ltd v Inland Revenue Comrs** [1975] 3 218, HL.

Issue—

Advances made to company—Advances made in accordance with agreement between creditor and company—Advances accepted by company—No issue to creditor of certificate or other documentary evidence of title—Acceptance conferring right on creditor to participate in benefit of obligations imposed on company by virtue of terms under which sums advanced—Whether acceptance constituting an 'issue' of loan capital—Finance Act 1899, s 8(1). **Agricultural Mortgage Corp Ltd v Inland Revenue Comrs** [1975] 2 155, ChD.

Loan capital—

Capital raised which has character of borrowed money—Capital—Loan to company on long-term basis rather than for temporary purpose—Loan for strictly limited purpose—Sums advanced not for purpose of being used reproductively in company's business—Parties envisaging that loan would be outstanding for considerable period of time—Whether money borrowed constituting 'capital' of company—Finance Act 1899, s 8(1)(5). **Agricultural Mortgage Corp Ltd v Inland Revenue Comrs** [1975] 2 155, ChD.

Capital raised which has character of borrowed money—Raising of capital—Company reducing capital by cancelling shares held by other company—Consideration for cancellation creation of debt in favour of other company—Whether creation of debt constituting raising of capital—Finance Act 1899, s 8(1)(5). **Reed International Ltd v Inland Revenue Comrs** [1975] 1 484, CA.

Letter or power of attorney—

Proxy—

Document authorising proxy to vote at any one meeting—Document not liable to duty—Document authorising proxy to vote at adjourned meeting or any new meeting dealing with specified matters—Whether document authorising proxy to vote at any one meeting—Whether document liable to stamp duty—Stamp Act 1891, Sch 1 (as amended by the Finance Act 1949, s 35, Sch 8, para 17). **Marx v Estates and General Investments Ltd** [1975] 3 1064, ChD.

Licensed premises—

Conveyance. *See* Conveyance on sale—Instrument whereby property or estate or interest in property on sale thereof transferred to or vested in purchaser—Conveyance of licensed premises, *post*.

Life insurance—

Assignment. *See* Insurance (Life insurance—Assignment—Stamp duty).

Loan capital—

Issue. *See* Issue of loan capital, *ante*.

Mortgage, bond, debenture or covenant—

Principal or primary security for the payment or repayment of money—

Guarantee of sale agreement—Agreement to purchase stock of company—Purchase price payable in two instalments—Agreement by purchasers to procure that sum payable as second instalment guaranteed by bank—Whether guarantee 'principal or primary security'—Stamp Act 1891, Sch 1. **Inland Revenue Comrs v Henry Ansbacher & Co** [1962] 3 843, HL.

Transfer of mortgage by way of gift. *See* Voluntary disposition inter vivos—Mortgage—Transfer of mortgage by way of gift, *post*.

Office—

Giving receipt liable to duty and not duly stamped—

Gives a receipt—Electricity prepayment meter card—Entry by collector—Card property of company—Receipt not given within Stamp Act 1891, s 103(1). **Attorney-General v Northwood Electric Light and Power Co Ltd** [1947] 1 483, CA.

Overpaid duty—

Interest. *See* Repayment—Interest on overpaid duty, *post*.

Pecuniary legacy—

Appropriation of stocks and shares in satisfaction of legacy. *See* Conveyance on sale—Instrument whereby property or estate or interest in property on sale thereof transferred to or vested in purchaser—Appropriation of stocks and shares in satisfaction o

Periodical payments. *See* Conveyance on sale—Periodical payments, *ante*.

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STAMP DUTY (cont)

Promissory note—

Documents deemed to be promissory notes—

Note promising payment of money out of fund which may or may not be available or on condition or contingency which may or may not be performed—Letter described as guarantee containing irrevocable undertaking to pay—Whether agreement or promissory note for purposes of stamping—Stamp Act 1891, ss 33(2), 38(1). **Wirth v Weigel Leygonie & Co Ltd** [1939] 3 712, KBD.

Proxy. *See* Letter or power of attorney—Proxy, *ante*.

Rate of duty—

Rate in force on date instrument executed—

Execution of deed—Delivery as an escrow—Deed signed, sealed and delivered as an escrow—Deed subsequently becoming effective on fulfilment of conditions of escrow—Whether deed 'executed' when delivered as an escrow or when conditions of escrow fulfilled—Stamp Act 1891, s 14(4). **Terrapin International Ltd v Inland Revenue Comrs** [1976] 2 461, ChD.

Receipt—

Offence. *See* Offence—Giving receipt liable to duty and not duly stamped, *ante*.

Reconstruction or amalgamation of companies—

Acquisition of shares in existing company—

Acquisition of not less than 90 per cent of issued share capital—Part of undertaking only acquired—Relation of relief to that part—Proportion borne by its value to 'the whole value of the undertaking'—Whether gross value of assets or net value (less liabilities)—Finance Act 1927, s 55(1)(c) (A)(i). **E Gomme Ltd v Inland Revenue Comrs** [1964] 3 497, ChD.

Acquisition of not less than 90 per cent of issued share capital—Part of 90 per cent of issued share capital previously acquired for cash—Finance Act 1927, s 55. **Lever Bros Ltd v Inland Revenue Comrs** [1938] 2 808, CA.

Consideration for acquisition consisting as to not less than 90 per cent in the issue of shares in transferee company—Part consideration in form of shares—Part not less than 90 per cent of whole consideration—Price fixed—Addition for excess value of certain assets over value included—Reverse payment of profits pending completion—No deduction of latter payment in computing consideration—Finance Act 1927, s 55(1)(i). **Metal Box Plastic Films Ltd v Inland Revenue Comrs** [1969] 3 1001, ChD.

Consideration for acquisition issue of shares in transferee company in exchange for shares in existing company—Consideration consisting as to not less than 90 per cent in issue of shares in transferee company—Issue of shares—Meaning—Shares issued subject to a condition requiring shareholders in existing company to transfer them to third party in exchange for cash—Whether consideration consisting in the issue of shares to shareholders in existing company—Whether necessary that shares should be issued to shareholders in existing company unconditionally—Finance Act 1927, s 55(1) (as amended by the Finance Act 1928, s 31). **Crane Fruehauf Ltd v Inland Revenue Comrs** [1975] 1 429, CA.

Increase of capital to acquire shares in Northern Ireland company—Existing company—Finance Act 1927, s 55(1). **Nestle Co Ltd v Inland Revenue Comrs** [1953] 1 877, CA.

Relief where 90 per cent of consideration in shares—Subsidiary company acquiring parent company's shares—Intermediate acquisition of subsidiary company's ordinary shares by a third company—Third company's offer of low priced option over subsidiary company's ordinary shares as inducement to preference shareholders of parent company to exchange their shares—Whether offer so made by third company was part of the consideration for the acquisition of the parent company's preference shares within Finance Act 1927, s 55(1). **Central and District Properties Ltd v Inland Revenue Comrs** [1966] 2 433, HL.

Issue of loan capital—

Relief where issue in connection with scheme for reconstruction or amalgamation and in exchange for holdings of loan capital of existing company—Meaning of 'in connection with'—Finance Act 1927, s 55(1)—Finance Act 1967, s 28(5). **Clarke Chapman-John Thompson Ltd v Inland Revenue Comrs** [1975] 3 701, CA.

Transfer of property from one associated company to another—

Increase of nominal share capital—Transfer on sale—Reconstruction—Transfer of 'undertaking'—Issue of shares in transferee company to existing company—Existing company not taking as beneficial owner—Holding company with assets consisting of shares in subsidiary companies—Transfer of certain trade investments to subsidiary company—Increase in capital of subsidiary and issue of new shares to holding company—Creation of new subsidiary company—Agreement by holding company to transfer shares in first subsidiary company and surplus cash to new company—Increase in capital of new company and issue of shares to shareholders of holding company—Whether scheme for reconstruction of holding company—Whether property transferred to subsidiary company and to new company part of undertaking—Whether holding company taking shares in subsidiary and new company as 'beneficial owner'—Finance Act 1927, s 55—Finance Act 1930, s 42. **Baytrust Holdings Ltd v Inland Revenue Comrs** [1971] 3 76, ChD.

Partial take-over of first company by second company—Second company majority shareholder—Differences between second company and minority shareholders in first company—Formation of third company with share capital of £100 held by first company—Agreement between first company and third company—Scheme of arrangement—Approval by court—Purchase by third company of part of estates and shareholdings of first company—Shares of third company allotted direct to minority shareholders of first company by way of consideration—Claim to reliefs—Whether arrangement 'reconstruction'—Whether acquisition of 'not less than 90 per cent of issued share capital'—Whether first company 'beneficial owner' of not less than 90 per cent of issued share capital of third company—Finance Act 1927, s 55—Finance Act 1930, s 42. **Brooklands Selangor Holdings Ltd v Inland Revenue Comrs** [1970] 2 76, ChD.

STAMP DUTY (cont)

Reconstruction or amalgamation of companies (cont)—

Transfer of undertaking in return for shares in transferee company—

Sale by 'existing' company of part of shareholding within two years of amalgamation—Finance Act 1927, s 55(6)(b). **Attorney-General v London Stadiums Ltd** [1949] 2 1007, CA.

Relief from duty—

Reconstruction or amalgamation of companies. *See* Reconstruction or amalgamation of companies, *ante*.

Transfer between associated companies. *See* Transfer of property from one associated company to another, *post*.

Repayment—

Interest on overpaid duty—

Amount of duty refunded to Revenue pending appeal to House of Lords—Appeal allowed—

Interest five per cent—No retroactive operation of enactment—Finance Act 1965 s 91.

Shop and Store Developments Ltd v Inland Revenue Comrs [1967] 1 42, HL.

Jurisdiction of court to order payment of interest—Stamp Act 1891 s 13(1)(4)—Law Reform (Miscellaneous Provisions) Act 1934, s 3. **Western United Investment Co Ltd v Inland Revenue Comrs** [1958] 1 257, ChD.

Series of transactions. *See* Conveyance on sale—Statement certifying transaction effected not forming part of series of transactions, *ante*.

Sufficiency of stamp. *See* Insurance policy—Assignment of policy to secure overdraft from bank—

Sufficiency of stamp, *ante*.

Transfer of property from one associated company to another—

Associated companies—

One company beneficial owner of more than 90 per cent of issued share capital of the other—Meaning of issued share capital—Canadian company having two classes of share—

American company owning less than 90 per cent of nominal issued share capital of Canadian company but more than 90 per cent in value of issued share capital of Canadian company—Transfer of shares held by American company in English company to Canadian company—Whether American company beneficial owner at time of not less than 90 per cent of issued share capital of Canadian company—Whether issued share capital meaning nominal issued share capital or value of issued share capital—Whether American and Canadian companies associated companies—Finance Act 1930, s 42 (as amended by Finance Act 1967, s 27). **Canada Safeway Ltd v Inland Revenue Comrs** [1972] 1 666, ChD.

Beneficial ownership—

Parent company having two wholly-owned subsidiaries—Transfer by one subsidiary to a company that was the wholly-owned subsidiary of the other subsidiary of the parent company—Share capital of transferee not in the beneficial ownership of the parent company—Parent company could be said to have 'controlling interest'—Finance Act 1930, s 42(2). **Rodwell Securities Ltd v Inland Revenue Comrs** [1968] 1 257, ChD.

Consideration for transfer—

Consideration 'provided directly or indirectly by' a person other than associated company—Arrangement necessarily involving provision of consideration by such person—

Merger of business interests—First company setting up subsidiary—Transfer of business and assets to subsidiary—Subsidiary subsequently issuing shares to second company in return for transfer of business and assets—Subsidiary thereby becoming subsidiary of second company—Duty on instruments of transfer from first company to subsidiary—Whether arrangement whereunder consideration for transfer to be provided indirectly by second company—Finance Act 1930, s 42—Finance Act 1938, s 50. **Times Newspapers v Inland Revenue Comrs** [1971] 3 98, ChD.

Transfer of leasehold property from one associated company to another—Purchase price provided by mortgage to bank—Repayment of purchase price guaranteed by third company—Share capital of transferee company acquired by third company—Whether consideration for transfer indirectly provided by third company—Finance Act 1930, s 42—Finance Act 1938, s 50. **Curzon Offices Ltd v Inland Revenue Comrs** [1944] 1 606, CA.

Transfer to associated company in return for allotment of shares—Sale of shares by associated company to issuing house which was not an associated company—Payment for allotment made out of proceeds of public issue—Whether the phrase 'consideration for the transfer' extended to include cash obtained for shares sold to issuing house—Finance Act 1930, s 42(1)—Finance Act 1938, s 50(1)(a). **Shop and Store Developments Ltd v Inland Revenue Comrs** [1967] 1 42, HL.

Effect of instrument—

Contract by original owner to sell freehold and leasehold properties to a company—Purchase price received but no conveyance or transfer executed by owner—Death of owner—Subsequent sale by company to associated company—Conveyance, transfer and assignment executed by deceased's personal representatives—Whether exempt from ad valorem stamp duty—Stamp Act 1891, ss 54, 58(4)—Finance Act 1930, s 42—Finance Act 1938 s 50(1)(b). **Escoigne Properties Ltd v Inland Revenue Comrs** [1958] 1 406, HL.

Transfer of stock. *See* Conveyance on sale—Instrument whereby property or estate or interest in property on sale thereof transferred to or vested in purchaser—Transfer of stock, *ante*.

Trusts—

Order for varying—

Practice. *See* Variation of trusts (Practice—Stamp duty).

Unstamped documents—

Notice by court of omission—

Court of Appeal—Matter not raised in court below—'Agreement or memorandum relating to sale of goods'—Stamp Act 1891, s 14(1), Sch 1, Agreement or Memorandum, Exemption (3). **Routledge v McKay** [1954] 1 855, CA.

STAMP DUTY (cont)

Voluntary disposition inter vivos—

Conveyance to trustees for sale—

Necessity for adjudication—Finance (1909—10) Act 1910, s 74. **Re Robb's Contract** [1941] 3 186, CA.

Declaration of trust—

Deed of declaration of trust made under power in earlier deed to vary trusts—Whether chargeable with ad valorem stamp duty—Stamp Act 1891, s 62—Finance (1909—10) Act 1910, s 74(1). **Fuller v Inland Revenue Comrs** [1950] 2 976, ChD.

Disposition by declaring new trusts—

Transfer of shares—Transfer by settlor to trustees of settlement—Subsequent oral direction to trustees on what trusts shares to be held—Deed of declaration by trustees subsequently confirming trusts—Whether direction a 'disposition' of settlor's interest—Whether deed liable to ad valorem stamp duty—Stamp Act 1891, Sch 1 Finance (1909—10) Act 1910, s 74(1)—Law of Property Act 1925, ss 53(1)(c), 205(1)(ii). **Grey v Inland Revenue Comrs** [1959] 3 603, HL.

Inadequate consideration—

Conveyance or transfer operating as a voluntary disposition—Adequacy of consideration—Family arrangement—Variation of trust—Surrender of reversionary life interest—Variation eliminating reversionary life interest and including beneficiary among class of beneficiaries under discretionary trusts—Whether reversionary life interest voluntarily disposed of—Finance (1909-1910) Act 1910, s 74(5). **Thorn v Inland Revenue Comrs** [1976] 2 622, ChD.Conveyance or transfer operating as a voluntary disposition—Intention of transferor—Relevance—Conveyance by reason of inadequacy of consideration conferring substantial benefit on transferee—Bargain at arm's length—No intention on part of transferor to confer any benefit on transferee—Whether open to collector to charge stamp duty on value of property conveyed rather than amount of consideration—Stamp Ordinance (Hong Kong)(c 117), s 27(1)(4). **Lap Shun Textiles Industrial Co Ltd v Collector of Stamp Revenue** [1976] 1 833, PC.

Mortgage—

Transfer of mortgage by way of gift—Whether liable to ad valorem duty as voluntary disposition inter vivos or as mortgage—Finance (1909—10) Act 1910, s 74(1). **Anderson (Sir Alan Garrett) v Inland Revenue Comrs** [1938] 4 491, KBD.

Transfer of shares—

Transfer by company in pursuance of resolution declaring capital bonus partly in specie and partly in cash—Whether transfer passing beneficial interest—Whether transfer liable to ad valorem duty—Finance (1909-10) Act 1910, s 74(6). **Associated British Engineering Ltd v Inland Revenue Comrs** [1940] 4 278, KBD.Transfer by company in pursuance of special resolutions dividing amongst members part of company's assets in specie or in kind—Transfer by company of shares owned in another company—Whether transfer liable to ad valorem duty—Finance (1909—10) Act 1910, s 74(1) (5)(6). **Wigan Coal and Iron Co Ltd v Inland Revenue Comrs** [1945] 1 392, KBD.Transfer stamped but bearing no adjudication stamp—Necessity for adjudication. **Conybear v British Biquettes Ltd** [1937] 4 191, ChD.

Value of property conveyed or transferred—

Variation of trust—Surrender of protected life interest—Elimination of prospective reversionary interests of unborn unascertained persons—Individual interests eliminated having no or only nominal market value—Variation of trusts effected by order of court—Whether property transferred by order having more than nominal value for purpose of stamp duty—Finance (1909-1910) Act 1910, s 74(1). **Thorn v Inland Revenue Comrs** [1976] 2 622, ChD.**STANDARD INDUSTRIAL CLASSIFICATION**Selective employment tax. *See* **Selective employment tax** (Standard Industrial Classification).**STANDING ORDER**Local authority. *See* **Local authority** (Standing orders).**STANDING SEARCH**Grant of administration. *See* **Administration of estates** (Grant of administration—Standing search).**STAND-PIPES**Right to charge water rates. *See* **Water supply** (Water rates—Right to charge—Water board's main in village street—Ancient right to water from stand-pipes free of charge).**STATE**Acts for purpose prejudicial to state. *See* **Criminal law** (Official secrets—Acts for purpose prejudicial to safety or interests of state).**STATE OF EMERGENCY**India. *See* **India** (State of emergency).**STATEMENT**

Duty to take care—

Information or advice. *See* **Negligence** (Information or advice).

Negligence—

Careless statement causing damage to person or property. *See* **Negligence** (Duty to take care—

Statement—Careless statement causing damage to person or property).

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Out of court—

Admissibility in evidence. *See* **Document** (Admissibility in evidence—Out of court statement).

STATEMENT OF CLAIM

Amendment—

Leave to amend. *See* Leave to amend, *post*.

Limitation of action—

Action alleging negligence in the conduct of a hospital—Allegation in statement of claim that authority responsible for negligence of house surgeon and surgeon—Amendment to include responsibility for pharmacist—New particular and not new cause of action—Public Authorities Protection Act 1893, s 1—Limitation Act 1939, s 21. **Collins v Hertfordshire County Council** [1947] 1 633, KBD.

Amendment creating new cause of action—Running-down action against authority also highway authority—Adding neglect to repair highway to negligent driving—Write—Particularity of indorsement. **Marshall v London Passenger Transport Board** [1936] 3 83, CA.

Amendment stating new cause of action—Period of limitation extended after expiration of period allowed by earlier Act—Public Authorities Protection Act 1893, s 1—Limitation Act 1939, ss 21, 33(a). **Batting v London Passenger Transport Board** [1941] 1 228, CA.

Right to amend—

Right to amend statement of claim after leave given to amend without proposed amendment first being formulated in writing—RSC Ord 28, r 12. **Busch v Stevens** [1962] 1 412, QBD.

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Order to 'deliver amended statement of claim in proper form'—Dismissal of action for want of prosecution by failing to comply with order—Whether jurisdiction to order delivery of amended statement of claim. **Re Langton (decd)** [1960] 1 657, CA.

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Claim in writ for damages for wrongfully taking away the support of the plaintiffs' land and houses—Allegation in statement of claim of negligence in not preventing support being withdrawn—Whether allegation in statement of claim setting up new cause of action—RSC Ord 2, r 1, Ord 3, r 2. **Graff Bros Estates Ltd v Rimrose Brook Joint Sewerage Board** [1953] 2 631, CA.

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Affidavit evidence—On ground for allegation that action unlikely to succeed—Whether affidavit evidence admissible on application—RSC Ord 18, r 19. **Wenlock v Moloney** [1965] 2 871, CA.

Inherent jurisdiction—Statement of claim disclosing cause of action—Application on which many affidavits were filed really on the ground that action was unlikely to succeed—Not a plain and obvious case—Trial in chambers on affidavit evidence—Improper exercise of jurisdiction—RSC Ord 18, r 19. **Wenlock v Moloney** [1965] 2 871, CA.

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Striking out part of claim—Libel—Claim against printer of advertising wrapper of book containing alleged libel—Assisting to publish—RSC Ord 25, r 4. **Marchant v Ford** [1936] 2 1510, CA.

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 - Construction—
 - Opinion of expert witness—Rejection—Whether court can reject opinion of witness tendered as expert on foreign law. **Sharif v Azad** [1966] 3 785, CA.
 - Headings and marginal notes. *See Construction*—Headings and marginal notes, *ante*.
 - Inclusio unius exclusio alterius. *See Construction*—Inclusio unius exclusio alterius, *ante*.
 - Inconsistency with constitution—
 - Ceylon—
 - Validity of statute—Amendment of constitution. *See Ceylon* (Constitutional law—Amendment of constitution—Amending statute inconsistent with constitution).
 - Interpretation section. *See Construction*—Interpretation section, *ante*.
 - Long title. *See Construction*—Long title, *ante*.
 - Mandatory statutory provision—
 - Coast protection—
 - Works scheme providing for coast protection charges—Whether time limit within which coast protection authority to levy charges was mandatory or directory—Coast Protection Act 1949, s 7(4)(b). **Cullimore v Lyme Regis Corp'n** [1961] 3 1008, QBD.
 - Waiver—
 - Concession invalid unless obtained in accordance with procedure laid down by statute—
 - Whether waiver possible. **Edward Ramia Ltd v African Woods Ltd** [1960] 1 627, PC.
- Mischief Act designed to prevent. *See Penal statute*—Mischief Act designed to prevent, *post*.
- No certiorari clause—
 - Jurisdiction to issue certiorari. *See Certiorari* (Jurisdiction—Statutory tribunal's decision—No certiorari provision in statute).
- Obsolescence—
 - Naturalisation—
 - Statute deeming lineal descendants of Princess Sophia to be natural born subjects—4 & 5 Anne. **HRH Prince Ernest Augustus of Hanover v Attorney-General** [1957] 1 49, HL.
- Offence—
 - Absolute offence—
 - Interpretation of enactment—Road Traffic Act 1960, s 235(2). **R v Cummerson** [1968] 2 863, CA.
 - Conviction under repealed statute—
 - Power of quarter sessions to amend summons on appeal from court of summary jurisdiction. **Meek v Powell** [1952] 1 347, KBD.

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Offence (cont)—

Duplicity—

One or more offences—Whether enactment creating one or several offences. **G Newton Ltd v Smith** [1962] 2 19, QBD.

Illegality not constituting an offence—

Enactment declaring lotteries unlawful—Betting and Lotteries Act 1934, s 21. **Sales-Matic Ltd v Hinchliffe** [1959] 3 401, QBD.

Mens rea—

Intention to deprive accused of defence by way of absence of mens rea not to be imputed to Parliament. **Warner v Metropolitan Police Comr** [1968] 2 365, HL.

Offences under this Act—

Offence against regulations—Whether offence under Act—Food and Drugs Act 1955, s 113 (1). **United Dairies (London) Ltd v Beckenham Corpn** [1961] 1 579, QBD.

Regulations—

Contravention of regulation amounting to offence under Act. **Rathbone v Bundock** [1962] 2 257, QBD.

Section of Act conferring power to make regulations and making non-compliance with regulations punishable—Whether such non-compliance an offence under the Part of the Act in which the section falls, for the purpose of a subsequent enactment of the Act—Road Traffic Act 1960, ss 35, 232(2)(b). **Bingham v Bruce** [1962] 1 136, QBD.

Order made under repealed statutory power—

Scope of order limited by scope of power—

Superseding enactment containing similar power but limited in scope by narrower definition—Effect on scope of order. **Re Simpkin Marshall Ltd** [1958] 3 611, ChD.

Superseding enactment conferring similar power not so limited—Original order saved—Scope of original order not extended. **Re a Solicitor** [1955] 1 257, QBD.

Parens patriae jurisdiction. *See* Crown—Parens patriae jurisdiction, *ante*.

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Erroneous view of the law—

Effect. **Re County of London (Devons Road, Poplar) Housing Confirmation Order 1945** [1956] 1 818, ChD, **Birmingham City Corpn v West Midland Baptist (Trust) Association (Incorporated)** [1969] 3 172, HL.

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Offence committed before abolition—Indictment signed after abolition—Whether conviction valid—Interpretation Act 1889, s 38(2)—Criminal Law Act 1967, s 12. **R v Fisher** [1969] 1 100, CA.

Avoidance of absurdity etc—

Substitution of 'or' for 'and', although result less favourable to accused—Official Secrets Act 1920, s 7. **R v Oakes** [1959] 2 92, CCA.

Construction more favourable to accused—

Two possible meanings—Adoption of more lenient meaning—Rent Act 1968, s 85. **Zimmerman v Grossman** [1971] 1 363, CA.

Two reasonable interpretations—Where there are two reasonable interpretations, the more lenient one should be adopted—Exchange Control Act 1947, s 1(1). **Re H P C Productions Ltd** [1962] 2 37, ChD.

Mischief Act designed to prevent—

Ascertaining meaning by construing statute as a whole—Long title—Express savings. **Kennedy v Spratt** [1971] 1 850, HL.

Implication against admission of self-incriminating evidence—Legislation designed to facilitate detection of fraud—Companies Act 1948, s 167(2), (4). **R v Harris (Richard)** [1970] 3 746, CCC.

Ordinary rules of construction—

Wide and comprehensive language—Contemporaneous circumstances—Judicial notice. **Elderton v United Kingdom Totalisator Co Ltd** [1945] 2 624, CA.

Strict construction—

Failure to comply with any of the provisions of a Part of an Act—One section in that Part an exempting provision—Failure to comply with requirement of exempting enactment—Whether an offence—Pharmacy and Poisons Act 1933, ss 18, 19, 24. **R v Staincross Justices, ex parte Teasdale** [1960] 3 572, QBD.

Strict construction not extending beyond clear meaning. **Liew Sai Wah v Public Prosecutor** [1968] 2 738, PC.

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Preamble. *See* Construction—Preamble, *ante*.

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Circumstances in which proviso may be construed as adding to and not merely qualifying what goes before—Stamp Duties Act 1920—1964 (New South Wales), s 102(2)(a). **Comr of Stamp Duties v Atwill** [1973] 1 576, PC.

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Implication—

Alteration of penalties—Metropolitan Paving Act 1817, s 75—Metropolis Management Act 1855, ss 122, 123. **Smith v Benabo** [1937] 1 523, KBD.

Right of entry on land by drainage board—Land Drainage Act 1930, s 34(4)—Land Drainage Act 1961, s 40(1). **Pattinson v Finningley Internal Drainage Board** [1970] 1 790, QBD.

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Accrued right or privilege—Anything done—Landlord and Tenant Ordinance (Laws of Hong Kong, revised edition 1950, as amended), s 3A-s, 3E—Interpretation Ordinance (Laws of Hong Kong, revised edition 1950), s 10(b)(c). **Director of Public Works v Ho Po Sang** [1961] 2 721, PC.

Subordinate legislation—

Implied repeal—Whether enactment of statute repealed by implication by subordinate legislation. **Ridge v Baldwin** [1963] 2 66, HL.

Retrospective operation—

Alteration in substantive law—

Enactment not expressly nor by necessary implication retroactive—Matrimonial Causes Act 1963, s 3. **Carson v Carson and Stoyek** [1964] 1 681, Div.

Amendment affecting right acquired or accrued under previous enactment—

Defence given by previous enactment—Defence given by previous enactment—Amendment taking away defence—Copyright—Design—Statute precluding right of action for breach of copyright where design not registered—Amendment enabling plaintiff to maintain action where design not registered—Failure to register design prior to amendment coming into force—Whether defendants' right to infringe copyright prior to amendment a right acquired or accrued—Copyright Act 1956, s 10 (as amended by the Design Copyright Act 1968)—Interpretation Act 1889, s 38(2)(a). **Sifam Electrical Instrument Co Ltd v Sangamo Weston Ltd** [1971] 2 1074, ChD.

Amendment extending disciplinary jurisdiction—

Amendment not expressly stated to be retroactive—Whether jurisdiction conferred in relation to conduct before date of amendment. **Re A Solicitor's Clerk** [1957] 3 617, QBD.

Amendment increasing penalty—

Increase in penalty by reference to date of conviction—Interpretation Act 1889, s 38(c), (d). **Director of Public Prosecutions v A E Lamb and B Lamb** [1941] 2 499, KBD.

Increase in penalty by reference to date of information. **Buckman v Button** [1943] 2 82, KBD.

Divorce—

Financial provision—Property adjustment. *See Divorce* (Financial provision—Lump sum order—Property adjustment order—Statutory powers—Retrospective operation).

Implication of retrospective operation—

Provision affecting substantive law—Divorce—Financial provision—Statutory provision empowering court to grant relief—Petition for divorce by wife filed prior to January 1971—Claim for maintenance—New statutory provision empowering court to order transfer of matrimonial home coming into force in January 1971—Provision not expressed to have retrospective effect—Provision affecting substantive law by creating new rights and obligations—Provision having retrospective effect by necessary implication—Matrimonial Proceedings and Property Act 1970, s 4(1), Sch 1, para 1. **Williams v Williams** [1971] 2 764, Div.

Motor insurance—

Rights of third parties against insurers. *See Motor insurance* (Rights of third parties against insurers—Rights under statute—Retrospective operation of statute).

Pending proceedings—

Alteration of law after judgment and before appeal—Duty of Court of Appeal—Vested substantive right not to be interfered with—Distinction for matters of procedure—Supreme Court of Judicature (Consolidation) Act 1925, s 27(1)—Supreme Court of Judicature (Amendment) Act 1959, s 1(1)—RSC Ord 58, r 9(3). **Attorney-General v Vernazza** [1960] 3 97, HL.

Disturbance of existing rights. **Hutchinson v Jauncey** [1950] 1 165, CA.

Enactment empowering husband to give evidence rebutting condonation—Sexual intercourse before statute, trial after—No provision in Act excluding pending proceedings—Matrimonial Causes Act 1963, s 1. **Blyth v Blyth and Pugh** [1966] 1 524, HL.

Enactment providing for relief notwithstanding temporary cohabitation with a view to reconciliation—Cohabitation before statute, trial after—Matrimonial Causes Act 1963, s 2(1). **Herridge v Herridge** (otherwise **Harridge**) [1966] 1 93, CA.

Statute coming into force after hearing of action, but before judgment—Landlord and Tenant (Rent Control) Act 1949, s 10. **Jonas v Rosenberg** [1950] 1 296, CA.

Taxing Act repealing previous Act—Provisions of new Act applicable as if incorporated in previous Act—Proviso that no party to any 'legal proceedings' pending on certain date to be prejudiced—Appeal by taxpayer lodged on following day—Notice of objection to assessments and of refusal of Commissioner to amend assessments had been previously given—Statutory discretion of judge on appeal to reduce assessment had not been re-enacted in the new Act—Whether legal proceedings were pending on the relevant date—Whether court's discretion under the previous Act remained applicable to the appeal—Income Tax (Management) Act 1952, s 78(6)—Income Tax (Management) Act 1958, s 152, Sch 5, para 1. **Rattan Singh v Commissioner of Income Tax** [1967] 1 999, PC.

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Procedural provisions—

Amendment—Landlord and tenant legislation—Business premises—Compensation where court precluded from granting application for new tenancy—Amendment extinguishing necessity for application to court in order to establish right to compensation—Whether amendment a procedural provision—Whether amendment having retrospective operation—Landlord and Tenant Act 1954, s 37(1) (as amended by Law of Property Act 1969, s 11). **Re 14 Grafton Street, London W1** [1971] 2 1, ChD.

Evidence taken at investigation before enactment passed—Whether evidence admissible, by virtue of enactment, in action against a witness after enactment passed—Companies Act 1967, s 50. **Selangor United Rubber Estates Ltd v Cradock (No 2)** [1968] 1 567, ChD.

Limitation period—Statute introducing limitation period—Whether provision retrospective in operation—Contracts of Employment Act 1972, s 8(8). **Grimes v London Borough of Sutton** [1973] 2 448, NIRC.

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Offence extended to persons assisting—Facts constituting alleged offence took place before enactment brought into force—Arraignment, trial and conviction thereafter—Whether enactment retroactive in operation—Criminal Law Act 1967, ss 4(7), 12(1). **R v Reah** [1968] 3 269, CA.

Repeal—

Defence of no sufficient memorandum of sale of goods—Writ issued and defence delivered before repeal—Sale of Goods Act 1893, s 4—Law Reform (Enforcement of Contracts) Act 1954, s 2. **Craxfords (Ramsgate) Ltd v Williams & Steer Manufacturing Co Ltd** [1954] 3 17, QBD.

Specific enactments—

Recovery of rent—Landlord and tenant (War Damage) (Amendment) Act 1941, s 13. **London Fan and Motor Co Ltd v Silverman** [1942] 1 307, KBD.

Rights of way—Procedural enactment—Rights of Way Act 1932, s 1(2) (6). **Attorney-General and Newton Abbot Rural District Council v Dyer** [1946] 2 252, ChD.

Taxing Act—

Ceylon. *See* **Ceylon** (Statute—Retrospective operation—Taxing Act).

Validating statute—

Queensland. *See* **Queensland** (Statute—Validating statute—Retrospective effect).

Workmen's compensation—

Injury before amending Act passed—Disease first noticed many years later—Worker never in employment after amendment passed. **Sunshine Porcelain Potteries Proprietary Ltd v Nash** [1961] 3 203, PC.

Rules of court—

Power to make rules of court—

No express power—Statute conferring new jurisdiction on court—Statute not to come into force until rules of court made—Statute conferring no express power to make necessary rules of court—Express powers of court's rules committee limited to other statutory provisions—Whether committee having power to make rules of court for purpose of new statute—Interpretation Act 1889, s 14—Northern Ireland Act 1962, s 7(1)—Criminal Appeal (Northern Ireland) Act 1968, ss 48A (as inserted by the Criminal Justice Act 1972, s 63(3), Sch 4), 49—Criminal Justice Act 1972, s 66(6), proviso (b). **Reference under s 48A of the Criminal Appeal (Northern Ireland) Act 1968, (No 1 of 1975)** [1976] 2 937, HL.

Statutory instrument—

Construction. *See* **Construction**—Statutory instrument, *ante*.

Statutory powers of public authority. *See* **Public authority** (Statutory powers).

Taxing Act—

Construction to avoid inequitable results—

Estate duty. **Fry v Inland Revenue Comrs** [1958] 3 90, CA.

Vagueness—

When court will say that subject has not been taxed in view of vagueness. **Comrs of Customs and Excise v Top Ten Promotions Ltd** [1969] 3 39, HL.

Temporary offence—

Expiry of statute. *See* **Criminal law** (Temporary statutory offence—Expiry of statute).

Temporary statute—

Expiry—

Effect of expiry on operation 'as respects things previously done'. **Wicks v Director of Public Prosecutions** [1947] 1 205, HL.

Territorial operation—

Territorial waters—

Warranty—Whether warranty limited to sales in the United Kingdom—Fertilisers and Feeding Stuffs Act 1926 s 2(2). **Henry Kendall & Sons Ltd** [1968] 2 444, HL.

United Kingdom—

Warranty limited to sales in United Kingdom—Fertilisers and Feeding Stuffs Act 1926, s 2(2). **C E B Draper & Son Ltd v Edward Turner & Son Ltd (H Gamwell Junior Ltd, Third Party; G C Dobell & Co Ltd, Fourth Party; and Steel Brothers & Co Ltd, Fifth Party)** [1964] 3 148, CA.

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Officer—

Refusal to perform duty imposed by university statute. *See* **University** (Officer—Refusal to perform duty imposed by university statute).

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Inconsistency between federal and state legislation—

South Australia. *See* **South Australia** (Statute—Validity—Inconsistency of federal and state legislation).

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Validity (cont)—

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Passage of Act secured by improper means—Jurisdiction of court—Pleadings challenging validity of private Act—Allegation that Act obtained by false and misleading recitals in preamble—Application to strike out pleadings—Whether court having jurisdiction in circumstances to disregard provisions of Act—Whether court having jurisdiction to enquire into proceedings in Parliament—Whether pleadings raising triable issue. **British Railways Board v Pickin** [1974] 1 609, HL.

Reference in Act to provisions of earlier void Act. *See* **Sierra Leone** (Legislation—Validity—Reference in Act to provisions of earlier void Act).

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Mandatory statutory provision. *See* Mandatory statutory provision—Waiver, *ante*.

White Paper—

Admissibility as aid to construction of document having force of statute. *See* Construction—White Paper—Admissibility, *ante*.

STATUTORY BODY

Injunction—

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STATUTORY COMPANY

See **Company** (Statutory company).

STATUTORY DUTY

Bookmaker. *See* Breach of duty imposed under sanction of penalty—Competence of civil action at suit of person aggrieved—Bookmaker, *post*.

Breach—

Breach by employers and employee—

Apportionment of responsibility where faults not co-extensive—Building regulations. *See* **Building** (Building regulations—Breach—Breach by employers and employee—Apportionment of responsibility where faults not co-extensive).

Breach of duty imposed under sanction of penalty. *See* Breach of duty imposed under sanction of penalty, *post*.

Cause of action—

Traffic regulations—Road markings. *See* **Road traffic** (Traffic sign—Road markings—Cause of action for contravention of regulations).

Civil liability—

Landlord and tenant—Harassment—Residential occupier—Acts calculated to interfere with peace or comfort of occupier—Acts done with intent to cause occupier to give up occupation—Criminal offence—Whether commission of offence giving rise to civil liability at suit of occupier—Rent Act 1965, s 30(2)(4). **McCall v Abelesz** [1976] 1 727, CA.

Lighting of vehicles. *See* **Road traffic** (Lighting of vehicles—Civil liability for breach of duty).

Coal mining. *See* **Coal mining** (Statutory duty—Breach).

Contributory negligence—

Workman and fellow employee. *See* **Negligence** (Contributory negligence—Workman and fellow employee—Breach of statutory duty).

Failure to maintain motor vehicle in proper condition—

Malaysia. *See* **Malaysia** (Statutory duty—Breach—Failure to maintain motor vehicle in proper condition).

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Maintenance. *See* **Highway** (Maintenance—Statutory duty of highway authority—Breach of duty).

Indemnity. *See* **Indemnity** (Breach of statutory duty).

Insurance—

Motor insurance. *See* **Motor insurance** (Using vehicle or causing or permitting vehicle to be used on road without policy being in force—Cause or permit—Breach of statutory duty).

Land drainage—

Whether right of action for damages. *See* **Land drainage** (Embankment—Statutory duty to maintain under local Act—Transfer of obligation to river board—Breach of duty—Whether right of action for damages conferred).

Motor insurance. *See* **Motor insurance** (Compulsory insurance against third party risks—Breach of statutory duty).

National health insurance—

Failure to insure. *See* **National health insurance** (Failure to insure—Breach of statutory duty).

Offices, shops and railway premises—

Safety of employees. *See* **Master and servant** (Duty of master—Offices, shops and railway premises—Safety of employees).

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Right of action—

Sale of vehicle in unroadworthy condition. *See* **Road traffic** (Motor vehicle—Sale in unroadworthy condition—Right of action for breach of statutory requirements).

When time begins to run. *See* **Limitation of action** (When time begins to run—Action for damages for breach of statutory duty).

STATUTORY DUTY (cont)

Breach of duty imposed under sanction of penalty—

Competence of civil action at suit of person aggrieved—

Action for damages by person aggrieved—Clearway—Regulation forbidding parking on clearway—Plaintiff's car colliding with car parked on clearway—Whether plaintiff entitled to claim damages for breach of statutory duty—Road Traffic Act 1960, s 26—Various Trunk Roads (Prohibition of Waiting) (Clearways) Order 1963 (S1 1963 No 1172), art 4. **Coote v Stone** [1971] 1 657, CA.

Bookmaker—Breach by occupier of dog racing track of duty to provide space for bookmaking—Whether bookmaker having right of civil action against occupier—Betting and Lotteries Act 1934, ss 11(2), 30(1). **Cutler v Wandsworth Stadium Ltd (in liquidation)** [1949] 1 544, HL.

Failure to carry rear light on car during hours of darkness—Collision with another car—Person injured—Whether separate remedy available to person aggrieved—Road Transport Lighting Act 1927, ss 1, 10. **Clark and Wife v Brims** [1947] 1 242, KBD.

Failure to maintain fire escape in good order—Employee on premises injured in fire—London Building Act 1930 s 5—London Building Acts (Amendment) Act 1939 ss 33(1), 133(2). **Solomons v R Gertzenstein Ltd** [1954] 2 625, CA.

Building legislation, under. *See* **Building** (Building regulations).

Common law duty of care—

Relationship. *See* **Negligence** (Duty to take care—Relation of statutory duty to common law duty).

Dangerous machinery—

Building operations. *See* **Building** (Building operations—Fencing of machinery—Dangerous machinery).

Coal mine. *See* **Coal mining** (Statutory duty—Machinery—Dangerous machinery).

Factory. *See* **Factory** (Dangerous parts of machinery).

Threshing machine. *See* **Agriculture** (Threshing machine—Fencing of dangerous parts).

Delegation—

Doctrine of delegation—

Applicability of doctrine—Doctrine inapplicable where duty on both employer and employee and question was whose was the fault as between them. **Ginty v Belmont Building Supplies Ltd** [1959] 1 414, QBD.

Delegation to employee—

What constitutes delegation. **Mainwaring v Billington** [1952] 2 747, CA.

Doctrine of delegation—

Distinguished from absolute liability. **R v Winson** [1968] 1 197, CA.

Docks legislation. *See* **Dock**.

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Supply. *See* **Electricity** (Supply—Statutory duty).

Employer's breach of duty to workman—

Breach causing or materially contributing to workman's injury—

OnUs of Proof. **Bonnington Castings Ltd v Wardlaw** [1956] 1 615, HL, **Nolan v Dental Manufacturing Co Ltd** [1958] 2 449, Assizes.

Onus of proof—No duty to order or to exhort experienced employees to use safety belts, which there might be a duty to make available, where there was reasonable and widespread practice not to use them. **Cummings (or McWilliams) v Sir William Arrol & Co Ltd** [1962] 1 623, HL.

Contributory negligence—

Apportionment of liability—Employer in breach of statutory duty to workman—Negligence of workman contributing to accident—Safety regulations for protection of workmen—Standard by which employer's duty to be judged in apportioning liability—Flagrant and continuous breach of statutory obligations—Momentary error on part of workman. **Mullard v Ben Line Steamers Ltd** [1971] 2 424, CA.

Employer's liability—

No apparent danger—Duty to ensure workman familiar with regulations—Whether absence of common law negligence relevant. **Boyle v Kodak Ltd** [1969] 2 439, HL.

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Local authority. *See* **Local authority** (Statutory duty—Enforcement).

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Generally. *See* **Factory**.

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Maintenance. *See* **Highway** (Maintenance—Statutory duty of highway authority).

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Duty in respect of school premises. *See* **Education** (Local education authority—Statutory duty in respect of school premises).

Duty to ascertain what children mentally defective. *See* **Education** (Local education authority—Statutory duty to ascertain what children mentally defective).

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Safety of roads and working places. *See* **Mine** (Safety of roads and working places—Statutory duty to secure safety of roads and working places).

Quarry manager. *See* **Quarry** (Safe methods of working).

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Duty to appoint look-out. *See* **Railway** (Look-out—Statutory duty to appoint in circumstances in which danger is likely to arise).

Road traffic—

Civil action. *See* Breach of duty imposed under sanction of penalty—Competence of civil action at suit of person aggrieved, *ante*.

STATUTORY INSTRUMENT

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Order in Council effecting international convention—Court bound by meaning of Order in Council—Ambiguity—Reference to convention admissible to resolve ambiguity—Differences in wording between Order in Council and corresponding provision of convention—Territorial Waters Order in Council 1964, art 5(1). **Post Office v Estuary Radio Ltd** [1967] 3 663, CA.

Ejusdem generis—

Stone, concrete, slag or similar material—Whether including brick—Construction (General Provisions) Regulations 1961, Sch para (2). *See* **Building** (Building operations—Protection of eyes of persons employed in specified processes—Duty to provide goggles for breaking stone, concrete, slag or similar materials—Demolishing brickwork—Brick dust entering employee's eye—Exclusion of brick from regulations).

Evidence—

Recondite subject-matter—Expert evidence admitted as to meaning attributed to words used in Order in Council—Territorial Waters Order in Council 1964. **Post Office v Estuary Radio Ltd** [1967] 3 663, CA.

Purposes of enabling statute—

Purpose of regulations determined by regard to purpose of statutory enactment under which regulation was made—Statutory power to make regulations for the protection of the public health—Regulation prohibiting the placing of food so as to involve risk of contamination—Whether contamination included contamination of such a nature as not to be injurious to public health—Food and Drugs Act 1955, s 13—Food Hygiene Regulations 1955 (SI 1955 No 1906), reg 8. **MacFisheries (Wholesale & Retail) Ltd v Coventry Corp'n** [1957] 3 299, QBD.

Vagueness—

Any like organisation howsoever described—Whether too vague—Whether ambiguous—Civil Authorities (Special Powers) Act (Amending) (No 1) Regulations (Northern Ireland) 1967, (SR & O 1967 No 42). **McEldowney v Forde** [1969] 2 1039, HL.

Effect of subsequent legislation on—

Subsequent legislation modifying enactment under which instrument made—

Instrument not in terms amended—Effect of instrument after modifying enactment in force—Statutes subsequently repealed and consolidated—Subordinate legislation continued by consolidating Act—Effect of instrument after the consolidation—Shops Act 1950, ss 1(2), 53(13), 76(2). **Miller's Cash Stores Ltd v West Ham Corp'n** [1955] 3 282, QBD.

Subsequent legislation repealing enactment under which statutory instrument made—

Saving for instruments made under repealed statute—Effect on instrument of doubtful validity—Former rule continued by superseding Act as if made under that Act—New rule in terms identical with former rule replacing rule *intra vires*—Bankruptcy Act 1914, ss 132(1) (2), 168(3)—Bankruptcy Rules 1952 (SI 1952 No 2113), r 219. *Re Fletcher, ex parte Fletcher v Official Receiver* [1955] 2 592, CA.

Subsequent legislation replacing enactment under which instrument made—

Subsequent legislation amended—Statutory instrument not modified in terms—Whether class of persons intended to be protected by instrument ascertained by reference to terms of repealed or subsisting legislation—Shipbuilding Regulations 1931 (SR & O 1931 No 133), preamble, reg 10—Factories Act 1937, s 60 (as amended by Factories Act 1948, s 12(1), Sch 1). **Canadian Pacific Steamships Ltd v Bryers** [1957] 3 572, HL.

Power to make instrument—

Condition for making instrument that authority should 'satisfy himself'—

Subjective or objective test—Validity of regulations imposing fine—Emergency Powers Order in Council 1939, s 6(1)—Cyprus Emergency Powers (Collective Punishment) Regulations 1955, reg 3(g)(i), reg 5(1)(2). **Ross-Clunis v Papadopoulos** [1958] 2 23, PC.

Instrument made under one subsection of Act—

Other subsection of enabling section limiting powers—Whether other subsection limiting powers to make instrument—Whether instrument *ultra vires*—Civil Authorities (Special Powers) Act (Amending) (No 1) Regulations (Northern Ireland) 1967 (SR & O 1967 No 42)—Civil Authorities (Special Powers) Act (Northern Ireland) 1922, s 1(1)(3). **McEldowney v Forde** [1969] 2 1039, HL.

Printing of statutory instruments—

Exemption from statutory requirements—

Certificate of exemption—Certificate—Letter from Ministry of Supply stating that price schedules 'have been certified to be exempted from printing'—Effect of failure to print instrument—Defence of absence of publication—Statutory Instruments Act 1946, ss 2(1), 3(2)—Statutory Instruments Regulations 1947 (SI 1948 No 1), reg 7. **Defiant Cycle Co Ltd v Newell** [1953] 2 38, QBD.

Failure to comply with statutory requirements—

Effect on statutory instrument—Order made by Minister of Supply and laid before Parliament—Schedules forming part of order not printed, and not certified by Minister as not requiring to be printed—Validity of order—Statutory Instruments Act 1946, ss 2(1), 3(2)—Statutory Instruments Regulations 1947 (SI 1948 No 1), reg 7. *R v Sheer Metalcraft Ltd* [1954] 1 542, Assizes.

Repeal of statute under which instrument made—

Saving for instruments made under repealed statute—

Effect on instrument of doubtful validity. *See* Effect of subsequent legislation on—Subsequent legislation repealing enactment Under which statutory instrument made, *ante*.

STATUTORY INSTRUMENT (cont)

Rules of court—

Alteration—

Effect on proceedings—Rules applicable to proceedings those in operation at date of proceedings—Alteration between date of divorce petition and date of application for maintenance. **Pachner v Parker (formerly Pachner)** [1960] 1 159, Div.

Power of Rules Committee—

Power to make rules relating to production of documents and Crown privilege—No power to alter substantive law—Crown privilege a matter of substantive law, not of practice and procedure—Supreme Court of Judicature (Consolidation) Act 1925, s 99(1)—RSC Ord 24, r 15. **Re Grosvenor Hotel, London (No 2)** [1964] 3 354, CA.

Validity—

Statutory requirements regarding printing of statutory instruments not complied with. *See* Printing of statutory instruments—Failure to comply with statutory requirements, *ante*.**STATUTORY NUISANCE***See* Nuisance (Statutory nuisance).**STATUTORY OFFENCE**Absolute liability. *See* Criminal law (Statutory offence—Absolute liability).Conspiracy to commit statutory offence. *See* Criminal law (Conspiracy—Statutory offence).**STATUTORY POWER**

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Public utility—

Powers not transferable. **Re Salisbury Railway & Market House Co Ltd** [1967] 1 813, ChD.Duty of care in exercising statutory powers. *See* Negligence (Duty to take care—Statutory powers).

Mental patient's Property—

Management. *See* Mental health (Patient's property—Statutory powers).

Negligence—

Damage caused by exercise of powers. *See* Negligence (Statutory powers—Damage caused by exercise of powers).Public authority. *See* Public authority (Statutory powers).**STATUTORY PROTECTION**

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Exclusion of statutory protection. *See* Landlord and tenant (Business premises—Tenancy—Exclusion of statutory protection).**STATUTORY TENANT**

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Lis alibi pendens. *See* Admiralty (Practice—Lis alibi pendens—Stay of proceedings in England).Agreement to refer to foreign court. *See* Conflict of laws (Stay of proceedings—Agreement to refer to foreign court).

Arbitration—

Agreement providing for arbitration. *See* Arbitration (Stay of court proceedings).Chancery Division. *See* Practice (Chancery Division—Stay of proceedings).

Company—

Winding-up by court. *See* Company (Compulsory winding-up—Stay of proceedings).Criminal proceedings. *See* Criminal law (Trial—Stay of proceedings).

Foreign court—

Determination of disputes by. *See* Conflict of laws (Stay of proceedings—Agreement to refer to foreign court—Action commenced in England).Generally. *See* Practice (Stay of proceedings).

STAY OF PROCEEDINGS (cont)

High Court. *See Practice* (Stay of proceedings).

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Admiralty proceedings. *See Admiralty* (Practice—Lis alibi pendens—Stay of proceedings in England).

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Winding-up of company—

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Whether crane a 'steel structure other than a building'. *See Dock* (Crane—Moveable dockside crane—Repainting—Works of engineering construction—Whether crane a 'steel structure other than a building' or of similar nature).

STERILISATION

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Fundamental rights of ward—Right of woman to reproduce—Sterilisation operation).

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Gas stock—

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Stockholder—

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Rectification of register. *See Petition of right* (Stockholder—Stock transferred by statutory authority to Crown).

Transfer of stock—

Rights transferred—

Right to unpaid interest—Transfer by procedure of Stock Exchange and by other methods—

Transfer of colonial stock—Government of Southern Rhodesia trustee stock—No interest paid on stock or capital repaid after unilateral declaration of independence by government of Southern Rhodesia—Whether transferees of stock only entitled to claim interest and repayment of capital as to which there had been default after acquiring stock—Whether mode of acquisition of stock material. *Barclays Bank Ltd v The Queen* [1974] 1 305, QBD.

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Petition of right by stockholder. *See Petition of right* (Stockholder—Stock transferred by statutory authority to Crown).

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Computation of profits—Accountancy principles. *see Income tax* (Computation of profits—Accountancy principles—Stock).

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Broker's right to indemnity—

Vendor repudiating contract—Broker replacing stock—Broker's claim to indemnity—

Principal's duty to broker—London Stock Exchange Rules, r 20. *Hichens Harrison Woolsten & Co v Jackson & Sons* [1943] 1 128, HL.

Course of business—

Continuation on agreed cover—

Implied agreement—Right to close account—Length of notice. *Samson v Frazier, Jelke & Co* [1937] 2 588, KBD.

Options—

Cum all usage—

Put options—Offer by American corporation to acquire half of each shareholder's holding of shares in an English company—Offer made after options over English company's shares entered into, and acceptable after last date for exercising options—Brokers liable as principals on option contracts—Client, option-holder, unwilling to submit to adjudication of the Council of The Stock Exchange on delivery of shares and payment of cash to fulfil options—Options exercised by letter of plaintiff's solicitors, not by member of The Stock Exchange—Whether options validly exercised. *Cunliffe-Owen v Teather & Greenwood & Co* [1967] 3 561, ChD.

Shares quoted on—

Valuation for capital gains tax. *See Capital gains tax* (Assets—Valuation—Market value—

Shares—Shares quoted on London Stock Exchange).

STOCK-IN-TRADE

Valuation—

Income tax. *See Income tax* (Computation of profits—Stock-in-trade—Valuation).

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STOLEN GOODS

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Seizure—

Stolen goods. *See* **Police** (Search warrant—Seizure of goods believed on reasonable grounds to be stolen goods).

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Easement. *See* **Easement** (Storage).

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Construction—

Permanent improvements charged to income or corpus—Trustees' power to recoup income out of corpus—Accumulations Act 1800. **Syed Omar Bin Shaikh Alkaff v Syed Abdulrahman Bin Shaikh Alkaff** [1941] 2 346, PC.

Public health—

Housing—

Dwelling-house declared to be insanitary—Declaration submitted to Governor-in-Council—Prohibition of further proceedings in respect of declaration—Quasi-judicial functions—Duties still remaining to be discharged—Singapore Improvement Ordinance (No 10 of 1927), ss 4, 57, 59-61. **Estate & Trust Agencies (1927) Ltd v Singapore Improvement Trust** [1937] 3 324, PC.

STREET

Betting—

Prohibition of betting in streets. *See* **Gaming** (Betting—Prohibition of betting in streets and public places).

Loudspeaker—

Use in street for advertising purposes. *See* **Advertisement** (Trade or business—Use of loudspeaker for advertising purposes).

Prevention of obstruction—

Regulation of traffic. *See* **Road traffic** (Regulation of traffic—Prevention of obstruction of streets).

Prostitution—

Soliciting or loitering in street. *See* **Criminal law** (Prostitution—Loitering or soliciting for purposes of prostitution—In a street).

Street betting. *See* **Gaming** (Betting—Prohibition of betting in streets and public places).

Street trading. *See* **Street trading**.

Traffic. *See* **Road traffic**.

STREET BETTING

Prohibition of. *See* **Gaming** (Betting—Prohibition of betting in streets and public places).

STREET OFFENCES

Prostitution. *See* **Criminal law** (Prostitution—Loitering or soliciting for purposes of prostitution).

STREET REFUGE

Lighting. *See* **Highway** (Obstruction—Lighting of obstruction—Street refuge).

STREET TRADING

Application to designate street as trading street—

Redesignation—

Earlier designation resolution rescinded—Right to apply anew—London County Council (General Powers) Act 1947, s 16. **R v Bermondsey Borough Council, ex parte Leonard** [1950] 1 1069, KBD.

Costermonger's barrow—

Closing hours. *See* **Shop** (Hours of closing—Retail trading elsewhere than in shop—Place where retail trade or business carried on—Costermonger's barrow).

Licence—

Application—

Competing applications—Discretion of borough council to choose between competing applications—Adoption of waiting list—Power of borough council to give preference to applicants not already holding licence for another pitch in area—London County Council (General Powers) Act 1947, s 21(1) (as substituted by the London County Council (General Powers) Act 1962, s 33). **R v London Borough of Tower Hamlets, ex parte Kayne-Levenson** [1975] 1 641, CA.

Nominated relative—Relative nominated by licence holder as person to whom he desires licence to be granted in event of licence holder's death—Timeous application by relative following death of licence holder—Duty of council to grant licence to relative unless grounds for refusal specified in statute—London County Council (General Powers) Act 1947, s 21(2A) (as inserted by the London County Council (General Powers) Act 1962, s 33). **R v London Borough of Tower Hamlets, ex parte Kayne-Levenson** [1975] 1 641, CA.

STREET TRADING (cont)

Licence (cont)—

Application (cont)—

Requirement that application should state 'street or streets' in which applicant intends to sell—Application specifying named market area comprising a number of streets—Necessary to specify particular street or streets—'Petticoat Lane' market area comprising ten streets—Application to trade in 'Any vacant position Petticoat Lane' invalid—London County Council (General Powers) Act 1947, s 21(1) (as amended by the London County Council (General Powers) Act 1962, s 33). **Perilly v Tower Hamlets Borough Council** [1972] 3 513, CA.

Cancellation—

Appeal—Right of person aggrieved to appeal to quarter sessions—Reversal of council's decision by magistrate—Right of council to appeal to quarter sessions—'Person aggrieved'—London County Council (General Powers) Act 1947, s 64. **R v London Sessions Appeal Committee, ex parte Westminster City Council** [1951] 1 1032, KBD.

Exemption—

Trader carrying on business with persons residing or employed in premises in a street—Street trading in course of that business—Ice cream vendor selling from stationary vehicle in street to residents in street—Vendor having no regular course of business with customers residing in street—Whether vendor exempt from requirement of having a street trading licence—London County Council (General Powers) Act 1947, ss 29, 30(c). **London Borough of Islington v Panico** [1973] 3 485, QBD.

Trader selling articles from receptacle which he ordinarily moves from place to place in pursuit of trade—Trader selling ice-cream from tricycle—Trader moving tricycle from street to street but stationary outside school when children entering or leaving—Whether exempt from requirement to hold licence—London County Council (General Powers) Act 1927, s 30. **Taylor v Townend** [1938] 1 336, KBD.

Grant—

Borough council—Duty to grant licence as soon as reasonably practicable after receipt of application—Council receiving applications from two applicants—One application received day before the other—Only one available pitch—Whether council bound to grant application received first regardless of merits—London County Council (General Powers) Act 1947, s 21(2). **Perilly v Tower Hamlets Borough Council** [1972] 3 513, CA.

Power to grant one-day licence—London County Council (General Powers) Act 1927, s 39. **Dennis v Willmore** [1936] 2 407, KBD.

Qualification to hold licence—

Person already holding licence for another pitch—Whether trader entitled to apply for licence for another pitch—Whether borough council having power to grant trader licences to operate separate pitches at the same time—London County Council (General Powers) Act 1947, s 21(1) (as substituted by the London County Council (General Powers) Act 1962, s 33). **R v London Borough of Tower Hamlets, ex parte Kayne-Levenson** [1975] 1 641, CA.

Refusal—

Grounds for refusal—Applicant unsuitable to hold a licence—Unsuitability—Applicant holding licence for another pitch in same area—Whether rendering applicant 'unsuitable' to hold licence—London County Council (General Powers) Act 1947, s 21(3)(a). **R v London Borough of Tower Hamlets, ex parte Kayne-Levenson** [1975] 1 641, CA.

Right of appeal—What constitutes refusal—Competing applications for licence—Council deciding to put application on waiting list—Council unable to accede to application because of lack of available space—Decision to place applicant on waiting list constituting a refusal—Duty of council to issue notice of refusal and to inform applicant of right of appeal—London County Council (General Powers) Act 1947, ss 21(3)(b), 25(1). **R v London Borough of Tower Hamlets, ex parte Kayne-Levenson** [1975] 1 641, CA.

Revocation—

Appeal—Powers of magistrate—London County Council (General Powers) Act 1947, s 25(1). **Stepney Borough Council v Joffe** [1949] 1 256, KBD.

Suitability of person to continue to be registered as licence holder—Manchester Corporation Act 1950 s 61(4)(b). **Manchester Corp v Penson** [1970] 1 646, QBD.

Offence—

Trading from stationary position in street without licence—

Street photographer taking photographs of persons in street and receiving deposit—Photographer not holding licence—Photographs sent to customers by post—Whether photographer guilty of offence—London County Council (General Powers) Act 1947, s 17(2). **Newman v Lipman** [1950] 2 832, KBD.

Pedlar—

Definition—

Person travelling and trading on foot—Salesman travelling in motor van to street and there going from house to house on foot—Whether acting as a 'pedlar'—Pedlars Act 1871, s 3. **Sample v Hulme** [1956] 3 447, QBD.

STREET WORKS

Income tax—

Cost of works payable in instalments. *See* **Income tax** (Annual payment—Deduction of tax—Street works).

Private. *See* **Highway** (Private street works).

Public. *See* **Highway** (Street—Street works).

Waterworks—

Duty of undertakers to reinstate streets etc after execution of work. *See* **Water supply** (Waterworks—Duty of undertakers to reinstate streets etc after execution of work).

STRIKE

Dismissal in connection with strike—

Unfair dismissal. *See* **Unfair dismissal** (Dismissal in connection with strike or other industrial action).

Illegal strike—

Acts committed before commencement. *See* **Trade dispute** (Acts done in contemplation or furtherance of trade dispute—In contemplation or furtherance—Acts committed before commencement of illegal strike).

Irregular industrial action short of a strike—

Emergency procedures. *See* **Industrial relations** (Industrial action—Emergency procedures).

Shipping—

Demurrage—

Rate. *See* **Shipping** (Demurrage—Rate of demurrage—Strike).

Unfair dismissal. *See* **Unfair dismissal** (Dismissal in connection with strike or other industrial action).

STRIKING OUT

Affidavit. *See* **Affidavit** (Striking out).

Defence—

Jurisdiction of Court of Appeal. *See* **Court of Appeal** (Jurisdiction—Striking out defence).

Notice of appeal—

Jurisdiction—

Court of Appeal. *See* **Court of Appeal** (Notice of appeal—Striking out—Jurisdiction of court).

Originating summons. *See* **Originating summons** (Striking out).

Pleading—

Divorce. *See* **Divorce** (Practice—Pleading—Striking out).

Generally. *See* **Pleading** (Striking out).

Statement of claim. *See* **Statement of claim** (Striking out).

STUD POKER

Lawfulness. *See* **Gaming** (Lawful and unlawful gaming—Card games—Stud poker).

STUDENT

College—

Dismissal—

Governing body. *See* **Education** (College—Governing body).

Hostel—

Classes of use. *See* **Town and country planning** (Development—Use classes—Students' hostel).

Supplementary benefit—

Calculation of benefit. *See* **Supplementary benefit** (Calculation of benefit—Deduction of resources from requirements—Notional or actual resources—Student awarded grant).

University—

Suspension—

Power to suspend students—Duty to hear parties etc. *See* **Natural justice** (Educational establishment—Suspension of student—Duty to hear parties etc).

STUDENTS' UNION

Charity—

Educational purposes. *See* **Charity** (Education—Educational purposes—University—Students' union).

SUB-CONTRACT

Generally. *See* **Contract** (Sub-contract).

Incorporation of terms from head contract—

Building contract. *See* **Building contract** (Sub-contract—Incorporation of terms from head contract).

Personal contract, of. *See* **Contract** (Personal contract—Right to sub-contract).

SUB-CONTRACTOR

Building contract. *See* **Building contract** (Sub-contractors).

SUBJECT TO CONTRACT

Sale of land—

Effect of qualification 'subject to contract'—

Acceptance of tender. *See* **Sale of land** (Acceptance of tender—Effect of qualification 'subject to contract').

Exchange of contracts. *See* **Sale of land** (Exchange of contracts—Agreement subject to contract).

Memorandum of contract. *See* **Sale of land** (Memorandum of contract—Circumstances in which memorandum must evidence existence of contract—Effect of qualification 'subject to contract').

SUBORDINATE LEGISLATION

Rules of court—

Statutory power to make rules. *See* **Statute** (Rules of court—Power to make rules of court).

SUBPOENA

Subpoena ad testificandum. *See* **Practice** (Subpoena ad testificandum).

Subpoena duces tecum. *See* **Practice** (Subpoena duces tecum).

SUBROGATION

Company—

Winding-up—

Retention of possession of lease after winding-up—Rights of landlord. *See* **Company** (Winding-up—Proof and ranking of claims—Rent—Retention of possession after winding-up—Rights of landlord—Subrogation of rights).

Indemnity. *See* **Indemnity** (Subrogation).

Insurance—

Generally. *See* **Insurance** (Subrogation).

Marine insurance. *See* **Marine insurance** (Subrogation).

Vendor's lien. *See* **Sale of land** (Vendor's lien—Subrogation).

SUBSCRIPTION

Deduction from emoluments for assessment to income tax. *See* **Income tax** (Emoluments from office or employment—Expenses wholly, exclusively and necessarily incurred—Subscription).

Unincorporated association—

Failure of member to pay subscription—

Resignation by conduct. *See* **Unincorporated association** (Resignation of member—

Resignation by conduct—Failure to pay subscription over number of years).

Value added tax—

Exemption—

Club or association—Rights of members over land. *See* **Value added tax** (Exemptions—Land—Grant of right over or licence to occupy land—Members' club—Subscriptions).

SUBSIDENCE

Building—

Insurance. *See* **Insurance** (Accident insurance—Perils insured against—Subsidence or collapse of building).

Land. *See* **Land** (Support).

SUBSIDY

Income tax—

Government subsidy—

Trading receipt. *See* **Income tax** (Profits—Trading receipts—Government subsidy).

SUBSTITUTED SERVICE

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SUBSTITUTION OF VERDICT

Criminal appeal—

Alternative offence. *See* **Criminal law** (Appeal—Substitution of verdict—Alternative offence).

SUBSTITUTIONAL GIFT

Settlement—

Issue. *See* **Settlement** (Issue—Substitutional gift).

Will. *See* **Will** (Gift—Substitutional gift).

SUBVENTION PAYMENTS

Income tax. *See* **Income tax** (Deductions in computing profits—Subvention payments).

SUCCESSION

Conflict of laws—

Generally. *See* **Conflict of laws** (Succession).

Windward and Leeward Islands. *See* **Windward and Leeward Islands** (Conflict of laws—Succession).

Foreign adoption. *See* **Adoption** (Foreign adoption—Death—Devolution of property).

Intestacy—

Generally. *See* **Intestacy** (Succession).

Palestine. *See* **Palestine** (Intestacy—Succession).

Trade—

Income tax. *See* **Income tax** (Succession to trade).

Will—

Legitimacy—

Succession to personal property in England. *See* **Will** (Legitimacy—Succession to personal property in England).

SUCCESSION DUTY

Canada. *See* **Canada** (Succession duty).

Incidence—

Exercise by will of special power of appointment—

Appointment of life interests in settled fund—Direction in will to pay all duties 'payable on my death under the terms of this my will'—Succession duty payable on death of testatrix in respect of life interests under appointment and duties to become payable on death of appointees not within direction for payment of duties. *Re Edwards* [1946] 2 408, ChD.

Predecessor—

Settlement by party with defeasible estate and party with contingent interest subject thereto—

Joint predecessors—Necessity for both parties to join in settlement to create interest of successor—Succession Duty Act 1853, s 2. *Re Drake's Settlement Trusts* [1937] 4 171, CA.

Queensland. *See* **Queensland** (Succession duty).

SUCCESSION DUTY (cont)

Succession—

Person beneficially entitled to property or income thereof under disposition—

Meaning of beneficially entitled—Pension granted to employee's widow—No enforceable right to pension—No succession duty payable—Succession Duty Act 1853, s 2. *Re J Bibby & Sons Ltd Pensions Trust Deed* [1952] 2 483, ChD.

Private Act of Parliament avoiding restraint upon alienation—

Whether succession destroyed—Succession Duty Act 1853, ss 2, 12, 15. *Attorney-General v Glyn Mills & Co* [1940] 2 103, HL.

SUICIDE

Causation—

Damages. *See Damages* (Remoteness of damage—Suicide).

Inquest—

Verdict. *See Coroner* (Inquest—Suicide).

Life insurance—

Exception. *See Insurance* (Life insurance—Exception—Suicide).

Pact—

Murder—

Accessory before the fact. *See Criminal law* (Murder—Accessory before the fact—Suicide pact).

War service injury—

Widow's pension. *See War pension* (Attributability).

SUMMARY COMMITTAL

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SUMMARY JUDGMENT

Fatal accident claim. *See Fatal accident* (Action—Summary judgment).

Generally. *See Practice* (Summary judgment).

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Mortgagee's action to recover principal moneys and interest under second mortgage. *See Mortgage* (Payment—Summary judgment—Leave).

Specific performance. *See Specific performance* (Summary procedure).

SUMMARY JURISDICTION

Solicitor—

Application for solicitor to pay costs personally. *See Solicitor* (Payment of costs by solicitor personally—Application for solicitor to pay costs personally—Summary jurisdiction).

SUMMARY OFFENCE

Addition of counts to indictment. *See Indictment* (Addition of new counts—Summary offence).

Conspiracy to commit summary offence. *See Criminal law* (Conspiracy—Indictment—Conspiracy to commit offence triable only summarily).

Incitement to commit summary offence—

Indictment. *See Criminal law* (Incitement—Indictable offence—Incitement to commit summary offence).

Perjury. *See Criminal law* (Perjury—Summary offence).

Right of accused to claim trial by jury for summary offence. *See Magistrates* (Right of accused to claim trial by jury for summary offence).

Road traffic offence. *See Road traffic* (Offence—Summary offence).

SUMMARY PROCEEDINGS

Possession of land. *See Land* (Summary proceedings for possession).

SUMMARY TRIAL

Arson. *See Criminal law* (Damage to property—Arson—Trial—Summary trial).

Committal proceedings distinguished. *See Criminal law* (Committal—Preliminary hearing before justices—Summary trial distinguished).

See Magistrates (Summary trial).

Summary trial of indictable offence—

Committal to quarter sessions for sentence. *See Quarter sessions* (Committal of offender for sentence—Summary trial of indictable offence).

SUMMING-UP

Criminal trial—

Burden of proof. *See Jury* (Direction to jury—Burden of proof).

Generally. *See Criminal law* (Trial—Summing-up).

SUMMONS

Chancery Division—

Generally. *See Practice* (Summons—Chancery Division).

Masters' summonses. *See Practice* (Chambers proceedings—Masters' summonses).

Commercial action—

Summons for transfer of action to commercial list. *See Commercial Court* (Practice—Summons for transfer of action).

Directions, for—

Dismissal of action for failure to take out. *See Practice* (Dismissal of action for want of prosecution—Inordinate delay without excuse—Plaintiffs in default in not proceeding with action).

Discovery on. *See Discovery* (Discovery on summons for directions).

Generally. *See Practice* (Summons for directions).

SUMMONS (cont)

Family Division—

Consent summons—

Divorce. *See* **Divorce** (Consent applications).

Form—

Amendment—

Summons for judgment. *See* **Practice** (Summary judgment—Summons for judgment—Form—Amendment).

Information or summons—

Road traffic offence. *See* **Road traffic** (Offence—Summons or information).Irregularity. *See* **Practice** (Irregularity—Summons).Judgment, for. *See* **Practice** (Summary judgment—Summons for judgment).Leave to proceed under Courts (Emergency Powers) Act 1939, for. *See* **Practice** (Summons—Summons for leave to proceed under Courts (Emergency Powers) Act 1939).

List—

Short summons. *See* **Practice** (Summons—Hearing—Short summonses and applications—List).Magistrates. *See* **Magistrates** (Summons).

Misfeasance summons—

Service on officer etc of company. *See* **Company** (Winding-up—Misfeasance summons—Service).Originating. *See* **Originating summons**.

Procedure summons—

Chancery Division. *See* **Practice** (Summons—Chancery Division—Procedure summons).Practice. *See* **Practice** (Chancery Division—Procedure summons).Restoration to list. *See* **Practice** (Summons—Restoration of summons to list).

Two summonses for one offence—

Antrefois acquit. *See* **Criminal law** (Antrefois acquit—Same offence—Two summonses).

Witness summons—

County court. *See* **County court** (Witness summons).**SUMMONS FOR DIRECTIONS**Discovery on. *See* **Discovery** (Discovery on summons for directions).Generally. *See* **Practice** (Summons for directions).**SUNDAY**Closing. *See* **Shop** (Sunday closing).

Dies non juridicus—

Injunction. *See* **Injunction** (Sunday—Dies non juridicus).**SUNDAY ENTERTAINMENT**

Cinema—

Licence. *See* **Cinema** (Licence—Sunday performance).

Licence—

Cinema. *See* **Cinema** (Licence—Sunday performance).Music and dancing. *See* **Entertainment** (Music and dancing licence—Application for Sunday licence).**SUNDAY OBSERVANCE**

Prohibition of transaction of business by tradesmen on Sunday—

Sunday Observance Act—

Company transacting business on Sunday—Liability to penalty. **Houghton-le-Touzel v Mecca Ltd** [1950] 1 638, KBD.

Prohibition on transaction of business by tradesman etc on Sunday—

Tradesman—

Estate agent—Contract to effect sale of land on commission entered into on Sunday—

Whether estate agent 'tradesman'—Sunday Observance Act 1677, s 1. **Gregory v Fearn** [1953] 2 559, CA.

Prohibition on transaction of business by tradesman on Sunday—

Transaction of business—

Contract between limited companies made on Sunday—Validity—Sunday Observance Act

1677, s 1—Interpretation Act 1889, s 2(1). **Rolloswin Investments Ltd v Chromolit Portugal Cutelarias e Produtos Metálicos SARL** [1970] 2 673, QBD.

Restrictions on Sunday entertainment—

Advertising public entertainment for Sunday to which persons admitted by payment of money an offence—

'Admitted'—Advertisement for all-in wrestling—Charge for seat—Whether free admission—Sunday Observance Act 1780, ss 1, 3. **Kitchener v Evening Standard Co Ltd** [1936] 1 48, KBD.Announcement of boxing contest in periodical—Whether 'advertisement'—Whether manager who absent from contest 'keeper'—Whether announcer of fights 'master of ceremonies'—Sunday Observance Act 1780, ss 1, 2, 3. **Green v Berliner** [1936] 1 199, KBD.Newspaper—Advertisement that gardens open on Sunday and dancing there—Informer claiming penalties against printers and publishers of advertisements for advertising Sunday entertainments—Whether 'advertiser'—Whether advertisement of entertainment—Sunday Observance Act 1780, s 3. **Green v Kursaal (Southend-on-Sea) Estates Ltd** [1937] 1 732, KBD.

Opening place for public entertainment on Sunday to which persons admitted by payment of money an offence—

Persons liable—Limited company—Evidence against company—Sunday Observance Act 1780, ss 1, 2. **Houghton-le-Touzel v Mecca Ltd** [1950] 1 638, KBD.Place used for public entertainment—Part of large park enclosed for purpose of motor cycle competition—Whether 'place'—Sunday Observance Act 1780, s 1. **Culley v Harrison** [1956] 2 254, QBD.

SUPER LEGALITE

Lawfulness. *See* **Gaming** (Lawful and unlawful gaming—Super Legalite).

SUPERANNUATION

Contribution—

Exemption from income tax. *See* **Income tax** (Exemption—Superannuation contribution).

Local government. *See* **Local government** (Superannuation).

Pension. *See* **Pension**.

Public authorities—

War bonus. *See* **Master and servant** (Superannuation).

SUPERMARKET

Hours of closing. *See* **Shop** (Hours of closing—Mixed shop—Supermarket).

SUPERVISION

Demolition of a building. *See* **Building** (Demolition—Supervision).

Scaffolding, of. *See* **Building** (Scaffolding—Erection or alteration of scaffolding—Supervision).

SUPERVISION ORDER

Agricultural holding. *See* **Agricultural holding** (Supervision order).

Effect. *See* **Magistrates** (Fine—Supervision order—Effect).

SUPPER HOUR

Extension. *See* **Licensing** (Permitted hours—Extension—Supper hour).

SUPPLEMENTARY BENEFIT

Calculation of benefit—

Adjustment for exceptional circumstances—

Award of amount exceeding basic allowance—Regard to be had to provisions for additional requirements—Additional requirements—Entitlement of recipient of allowance to further sum after two years—Sum awarded for additional requirements exceeding sum awarded for exceptional circumstances—Whether sum awarded for additional requirements to be reduced by amount of sum paid for exceptional circumstances—Ministry of Social Security Act 1966, Sch 2, paras 4, 12. *R v Greater Birmingham Appeal Tribunal, ex parte Simper* [1973] 2 461, QBD.

Deduction of resources from requirements—

Calculation of requirements—Requirements of 'householder'—Meaning of 'householder'—Joint tenants of flat—Whether each tenant a 'householder'—Supplementary Benefit Act 1966, Sch 2, para 9(b). *R v Preston Supplementary Benefits Appeal Tribunal, ex parte Moore* [1975] 2 807, CA.

Income resources—Lump sum—Accrued arrears of income—Recovery of arrears of weekly payments due under court order—Arrears having accrued during period prior to claim for supplementary benefit—Commission entitled to determine that lump sum income rather than capital resource—Whether as income sum to be attributed to period in past during which arrears accrued and therefore irrelevant for determining entitlement to future benefit—Supplementary Benefit Act 1966, s 4(1), Sch 2, para 1. *R v West London Supplementary Benefits Appeal Tribunal, ex parte Taylor* [1975] 2 790, QBD.

Notional or actual resources—Maintenance—Undertaking by son-in-law to maintain applicant—Applicant given permission to enter United Kingdom on strength of undertaking—Son-in-law later refusing to maintain applicant—Whether applicant's resources including notional sum for maintenance by son-in-law—Whether son-in-law under duty to maintain applicant—Supplementary Benefit Act 1966, s 4(1). *R v West London Supplementary Benefits Appeal Tribunal, ex parte Clarke* [1975] 3 513, QBD.

Notional or actual resources—Student awarded grant—Grant covering period of vacation—Student having spent grant before start of vacation—Student applying for supplementary benefit for vacation period—Whether appropriate portion of grant for vacation period to be included in calculation of 'resources'—Supplementary Benefit Act 1966, Sch 2, para 1. *R v Preston Supplementary Benefits Appeal Tribunal, ex parte Moore* [1975] 2 807, CA.

Notional or actual resources—Student awarded grant—Grant covering period of vacation—Parental contribution—Student applying for supplementary benefit for vacation period—Commission deducting portion of grant for vacation maintenance from requirements—Deduction greater than grant received by student—Student presumed to have received additional contribution to maintenance from parent—Whether parent's contribution should be taken into consideration in calculating student's resources—Supplementary Benefit Act 1966, Sch 2, para 4(1). *R v Barnsley Supplementary Benefits Appeal Tribunal, ex parte Atkinson* [1976] 2 686, QBD.

Entitlement—

Aggregation of requirements and resources—

Person having to provide for requirements of another person—Meaning of 'requirements'—Other person child under age of 16—Mother providing for children—Children having sufficient independent means to provide for necessities of life—Mother not having to provide for children's necessities—Whether 'requirements' limited to payments for necessities of life—Whether mother having to provide for children's 'requirements'—Whether children's resources to be aggregated with mother's for purpose of determining her entitlement to supplementary benefit—Ministry of Social Security Act 1966, Sch 2, para 3(2). *K v JMP Co Ltd* [1975] 1 1030, CA.

SUPPLEMENTARY BENEFIT (cont)

Overpayment—

Recovery—

Misrepresentation or non-disclosure—Recovery after death of claimant—Proceedings by Secretary of State against executor—Reference to appeal tribunal—Determination by tribunal of amount recoverable—Proceedings in High Court for recovery of amount determined by tribunal—Whether Secretary of State entitled to refer matter to tribunal after claimant's death—Whether proceedings for recovery of amount determined by tribunal maintainable against executor—Ministry of Social Security Act 1966, s 26(1)(2). **Secretary of State for Social Services v Solly** [1974] 3 922, CA.

SUPPLYControlled drug. *See* **Drugs** (Dangerous drugs—Supply).

Dangerous drugs—

Prohibition on. *See* **Drugs** (Dangerous drugs—Prohibition on supplying dangerous drugs).Electricity. *See* **Electricity** (Supply).Gas. *See* **Gas** (Supply of gas).

Value added tax—

Supply of goods or services. *See* **Value added tax** (Supply of goods or services).**SUPPORT**

Electricity pylons—

Right of support. *See* **Electricity** (Pylons—Support).

Gas mains—

Right of support. *See* **Gas** (Support of gas mains—Right of support).

Land—

Generally. *See* **Land** (Support).

Mandatory injunction. *See* **Injunction** (Mandatory injunction—Discretion over grant of remedy—Unreasonable expense—Loss of support of plaintiff's land by reason of defendant's excavation on neighbouring land).

Mine—

Support of roof. *See* **Mine** (Support—Support of roof).

Semi-detached houses—

Support of adjoining semi-detached houses—

Compulsory purchase of one—Failure to notify owner of other house of order—Necessity of notifying owner of other house. *See* **Compulsory purchase** (Compulsory purchase order—Application to quash order—Notification of owner of land comprised in order—Failure to notify owner of semi-detached house adjoining house subject to order).

Right of. *See* **Easement** (Support).**SUPREME COURT**

Costs—

Jurisdiction. *See* **Costs** (Jurisdiction—Costs of and incidental to proceedings in the Supreme Court).

SUPREME COURT OF CANADA*See* **Canada** (Supreme Court of Canada).**SURCHARGE**Local government audit. *See* **Local government** (Audit—Surcharge).**SURETY**Administration bond. *See* **Administration of estates** (Administration bond—Sureties).

Bankruptcy—

Proceedings for declaration of fraudulent preference in respect of debt guaranteed—

Joinder of surety. *See* **Bankruptcy** (Fraudulent preference—Joinder of parties—Bankrupt's account guaranteed by surety).

Criminal law. *See* **Criminal law** (Bail).Guarantee. *See* **Guarantee** (Surety).**SURGEON**

Negligence—

Operation. *See* **Negligence** (Professional person—Surgeon—Operation).

Vicarious liability—

Liability for acts of resident hospital staff. *See* **Vicarious liability** (Principal and agent—Surgeon).

SURGERY

Promotion of—

Charitable object. *See* **Charity** (Benefit to community—Surgery—Promotion of surgery).**SURPLUS ASSETS**

Unincorporated association—

Distribution of surplus assets on dissolution. *See* **Unincorporated association** (Dissolution—Distribution of surplus assets among members).

SURPLUS INCOMEAccumulation. *See* **Accumulation** (Surplus income).**SURRENDER**Fugitive criminal. *See* **Extradition** (Surrender).Fugitive offender. *See* **Extradition** (Fugitive offender—Surrender).

SURRENDER (cont)

Lease—

Contract to convey or create a legal estate—

Registration as estate contract. *See* **Land charge** (Estate contract—Contract to convey or create a legal estate—Contract—Meaning—Obligation binding on one party only—Absence or money consideration—Lease—Surrender).

Licence—

Intoxicating liquor. *See* **Licensing** (Licence—Surrender).

Tenancy—

Business premises—

Continuation of tenancy. *See* **Landlord and tenant** (Business premises—Continuation of tenancy—Surrender).Generally. *See* **Landlord and tenant** (Surrender of tenancy).**SURTAX**Avoidance. *See* **Income tax** (Avoidance—Surtax).

Income tax—

Including surtax. *See* **Income tax** (Meaning of 'income tax'—Surtax).

Law reports—

Citation in revenue cases. *See* **Practice** (Citation of cases—Reports—Revenue cases).**SURVEYOR**

Remuneration—

Additional work—

Lump sum fee originally agreed. *See* **Contract** (Quantum meruit—Existing contract—Additional work—Need for implication of new contract and thus to get rid of old contract—Contract for surveyor to arrange, supervise, etc specified building work estimated to cost £600 for fee of £30).**SURVIVAL**

Commorientes—

Presumption. *See* **Administration of estates** (Commorientes—Survival).**SURVIVORSHIP**

Survive—

Meaning. *See* **Will** (Surviving).**SUSPECTED PERSON**Vagrancy offence. *See* **Criminal law** (Vagrancy—Suspected persons).**SUSPENDED ORDER**

Committal—

Non-payment of judgment debt. *See* **Debt** (Non-payment of judgment debt—Committal—Order—Suspension).

Possession—

Costs—

Special reasons—Agricultural worker—Tied cottage. *See* **Agriculture** (Agricultural worker—Tied cottage—Possession—Suspended order for possession—Costs).Discretion to suspend order. *See* **Landlord and tenant** (Recovery of possession—Order for possession—Suspension of order—Discretion).Leave to issue execution. *See* **Execution** (Leave to issue execution—Application—Suspended order for possession).**SUSPENDED SENTENCE***See* **Sentence** (Suspended sentence).**SUSPENSION**

Standing orders—

Local authority. *See* **Local authority** (Standing orders—Power to suspend).**SWAZILAND**

Murder—

Procedure—

Native assessor—Opinion not given in public—Swaziland High Court Proclamation 1938, ss 8, 10(1). *Mahlikilili Dhalamini v R* [1943] 1 463, PC.**TAKE-OVER**

Capital gains tax—

Effect of undisclosed take-over negotiations on valuation of shares—

Market value—Shares quoted on London Stock Exchange. *See* **Capital gains tax** (Assets—Valuation—Market value—Shares—Shares quoted on London Stock Exchange—Quoted price as proper measure of market value—Special circumstances displacing quoted price as proper measure—Take-over).Company. *See* **Company** (Take-over bid).**TAKING**Larceny. *See* **Criminal law** (Larceny—Taking).**TALAQ**

Divorce by—

Recognition. *See* **Divorce** (Foreign decree—Recognition by English court—Foreign divorce not judicial act—Marriage celebrated and divorce occurring in England—Divorce by talaq).

TANGANYIKA

Land—

Occupancy—

Right of occupancy under certificate of occupancy—Interest in land distinct from lease—
Conditions of occupancy not complied with—Revocation of certificate for failure to comply
with conditions—Whether revocation valid if given without notice of breach—Tanganyika
Land Ordinance 1923—Tanganyika Land (Law of Property and Conveyancing) Ordinance
1923—Conveyancing Act 1881, s 14(1). *Premchand Nathu & Co Ltd v Land Officer*
[1963] 1 216, PC.

TAPE RECORDING

Criminal proceedings—

Refreshing memory. *See* **Criminal evidence** (Witness—Refreshing memory—Tape recording).

Discovery—

Whether tape recording a 'document'. *See* **Discovery** (Production of documents—Document—
Mea1ling—Tape recording).

Evidence in criminal proceedings. *See* **Criminal evidence** (Best evidence—Tape recordings).

TAX

Business tax—

Canada. *See* **Canada** (Business tax).

Capital gains tax. *See* **Capital gains tax**.

Company—

Winding-up—

Preferential payment. *See* **Company** (Winding-up—Preferential payments—Taxes).

Corporation profits tax—

Hong Kong. *See* **Hong Kong** (Corporation profits tax).

Corporation tax. *See* **Income tax** (Corporation tax).

Damages—

Effect on—

Fatal accident. *See* **Fatal accident** (Damages—Taxation—Effect on award of incidence to
tax).

Lost future earnings—

Allowance for incidence of tax. *See* **Damages** (Personal injury—Loss of future earnings—
Income tax).

Death duty—

Generally. *See* **Estate duty**.

New South Wales. *See* **New South Wales** (Death duty).

Entertainment duty. *See* **Entertainment duty**.

Estate duty—

Australia. *See* **Australia** (Estate duty).

Generally. *See* **Estate duty**.

New Zealand. *See* **New Zealand** (Estate duty).

Excess profits tax. *See* **Excess profits tax**.

Income tax—

Australia. *See* **Australia** (Income tax).

Canada. *See* **Canada** (Income tax).

Ceylon. *See* **Ceylon** (Income tax).

Generally. *See* **Income tax**.

New Zealand. *See* **New Zealand** (Income tax).

Legacy duty—

New South Wales. *See* **New South Wales** (Legacy duty).

Local taxation licences. *See* **Local government** (Local taxation licences).

Motor vehicle—

Rate of duty. *See* **Road traffic** (Excise licence—Rate of duty).

National defence contribution. *See* **National defence contribution**.

Northern Ireland—

Powers of Government of Northern Ireland. *See* **Northern Ireland** (Reference—Taxation—Powers
of Government of Northern Ireland).

Profits tax. *See* **Profits tax**.Purchase tax. *See* **Purchase tax**.

Sales tax—

Canada. *See* **Canada** (Sales tax).

Selective employment tax. *See* **Selective employment tax**.Stamp duty. *See* **Stamp duty**.

Succession duty—

Canada. *See* **Canada** (Succession duty).

Succession duty. *See* **Succession duty**.Value added tax. *See* **Value added tax**.

Variation of settlement—

Result of variation reduction in tax payable. *See* **Variation of settlement** (Jurisdiction—Divorce
Division—Result of variation reduction in tax payable).

Will—

Income—

Gift of income free of all taxes (including income tax) and duties. *See* **Will** (Gift—Income—
Income free of all taxes (including income tax) and duties).

TAX ADVANTAGE

See **Income tax** (Tax advantage)

TAX AVOIDANCE

Income tax. *See* **Income tax** (Avoidance).

TAX RESERVE CERTIFICATE

Interest on certificate. *See* **Income tax** (Interest—Tax reserve certificates).

TAXATION

Costs—

Admiralty. *See* **Admiralty** (Costs—Taxation).
 Arbitration. *See* **Arbitration** (Costs—Taxation).
 Divorce. *See* **Divorce** (Costs—Taxation).
 Generally. *See* **Costs** (Taxation).
 House of Lords. *See* **House of Lords** (Costs—Taxation).
 Legal aid proceedings. *See* **Legal aid** (Taxation of costs).
 Vouching bills of costs. *See* **Costs** (Vouching bills of costs).

Scottish decision—

Conformity. *See* **Precedent** (Scottish decision—Conformity—Revenue and taxation matters).

TAXI

Driver—

Tips—

Income tax. *See* **Income tax** (Emoluments from office or employment—Voluntary payment—Payment arising in ordinary course of taxpayer's employment—Taxi-cab driver—Tips).

Hackney carriage. *See* **Road traffic** (Hackney carriage).

Waiting and loading restrictions—

London. *See* **Road traffic** (Waiting and loading restrictions—London—Taxi).

TAXING ACT

See **Statute** (Taxing Act).

TAXING MASTER

Costs—

Taxation—

Arbitration. *See* **Arbitration** (Costs—Taxation—Discretion of arbitrator—Award directing costs to be taxed 'in the High Court'—Discretion of taxing master).

Criminal proceedings—Appeal from decision—Legal aid. *See* **Legal aid** (Taxation of costs—Criminal proceedings—Appeal from decision of taxing master).

TEACHER

Dismissal—

Appointment during pleasure—

Natural justice. *See* **Natural justice** (Public authority—Dismissal of employee).

Bias of tribunal inquiring into dismissal of teacher. *See* **Tribunal** (Membership—Bias—Inquiry into dismissal).

Generally. *See* **Education** (Teacher).

Negligence—

Liability of local education authority. *See* **Education** (Local education authority—Negligence—Teacher).

Suspension—

Suspension pending determination of charges against teacher—

Right of teacher to be heard prior to suspension. *See* **Natural justice** (Educational establishment—Complaint against teacher—Duty to hear parties etc).

TELEGRAPHS AND TELEPHONES

Broadcasting. *See* **Broadcasting**.

Telegraphic lines—

Placing of telegraph line across private land—

Public interest—Consent of land owner sought by Post Office—Failure to give consent—'Amenities' not impaired—Two farming households in neighbourhood thereby deprived of telephone service—Whether failure to give consent was contrary to public interest—Wayleave—Telegraph (Construction) Act 1916, s 1. **Cartwright v Post Office** [1969] 1 421, CA.

Telephone—

Account—

Certified account—Whether conclusive evidence of amount owing—Telegraph Act 1885, s 2—Telephone Regulations 1936 (S R & O 1936 No 173), reg 18(2). **Postmaster-General v Wadsworth** [1939] 4 1, CA.

Contact by master in Chancery Division. *See* **Practice** (Chambers—Proceedings—Telephone contact).

Wireless—

Licence—

Block of flats—Wireless receiving set installed by landlord—Loud-speaker in tenant's flat—Liability of tenant for wireless licence—Wireless Telegraphy Act 1904, s 1(3). **King v Bull** [1937] 1 585, KBD.

TELEPHONE

See **Telegraphs and telephones** (Telephone).

TELEVISION

Broadcast receiving licence—

Revocation—

Statutory power to revoke licence—Misuse of power. *See* **Public authority** (Statutory powers—Misuse of power—Exercise of power for unlawful purpose—Validity—Licence—power to revoke licence—Threat to exercise power for unlawful purpose—Wireless telegraphy—Broadcast receiving licence).

Generally. *See* **Broadcasting** (Television).

Interference with reception—

Nuisance. *See* **Nuisance** (Television—Interference with reception).

TELEVISION (cont)

Interview—

Pending legal proceedings—

Contempt of court. *See* **Contempt of court** (Publications concerning legal proceedings—Pending proceedings—Television interview at time when obvious that person interviewed about to be arrested and tried on charge of gross fraud).

Licence to televise copyright play—

Right of licensee to make alterations. *See* **Copyright** (Licence—Rights of licensee—Right to make alterations—Licence has right to make alterations except insofar as licence expressly or impliedly excludes right—BBC licensed by plaintiff, member of Scre**TELEVISION FILM**

Document—

Production in court—

County court. *See* **County court** (Production of document—Meaning of 'document'—Cinematograph film).**TEMPORARY ACCOMMODATION**

Acquisition of land for—

Authorisation by Minister. *See* **Housing** (Temporary accommodation—Acquisition of land—Authorisation by Minister).**TEMPORARY STATUTE***See* **Statute** (Temporary statute).**TEMPORARY STATUTORY OFFENCE***See* **Criminal law** (Temporary statutory offence).**TEMPORARY STRUCTURES**

Construction of—

Building operations in. *See* **Building** (Construction of temporary structures for purposes of building operations, etc).**TENANCY**

Adverse possession—

Granted by. *See* **Limitation of action** (Land—Adverse possession—Seasonal tenancy).

Agreement—

Generally. *See* **Landlord and tenant** (Tenancy agreement).Indemnity. *See* **Indemnity** (Tenancy agreement).

Registration as estate contract—

Effect on subsequent mortgage. *See* **Land charge** (Estate contract—Tenancy agreement—Effect of registration on subsequent mortgages).Agricultural holding. *See* **Agricultural holding**.Allotment. *See* **Allotment**.

At will—

Business premises. *See* **Landlord and tenant** (Business premises—Tenancy—Tenancy at will).Characteristics. *See* **Landlord and tenant** (Tenancy—Tenancy at will—Characteristics).Licence distinguished from. *See* **Licence** (Licence to occupy premises—Licence distinguished from tenancy at will).

Business premises—

Generally. *See* **Landlord and tenant** (Business premises).Opposition to grant of new tenancy. *See* **Landlord and tenant** (Opposition to grant of new tenancy of business premises).

Covenant—

Repair. *See* **Landlord and tenant** (Repair).Encroachment by tenant. *See* **Landlord and tenant** (Encroachment by tenant).Enfranchisement. *See* **Landlord and tenant** (Leasehold enfranchisement).

Entitlement—

Permission for development. *See* **Town and country planning** (Permission for development—Certificate that applicant owner of fee simple or entitled to tenancy of land).

Furnished—

Protected tenancy. *See* **Rent restriction** (Furnished letting).Grant. *See* **Landlord and tenant** (Tenancy—Grant).Licence distinguished from. *See* **Licence** (Licence to occupy land—Licence distinguished from tenancy).

Life tenant—

Continuance of life—

Burden of proof. *See* **Trust and trustee** (Life interest—Continuance of life of life tenant—Burden of proof).

Local authority tenancy—

Divorce—

Property adjustment order. *See* **Divorce** (Property—Adjustment order—Meaning of property—Local authority tenancy).

Long tenancy—

Tenant having right to acquire freehold or extended lease. *See* **Landlord and tenant** (Leasehold enfranchisement—Long tenancy).

Mortgage—

Receiver. *See* **Mortgage** (Receiver—Tenancy).

New tenancy—

Business premises—

Opposition to grant of new tenancy. *See* **Landlord and tenant** (Opposition to grant of new tenancy of business premises).

Rent—

Business premises. *See* **Landlord and tenant** (Rent—Business premises—New rent).

TENANCY (cont)

New tenancy (cont)—

Shop. *See* **Landlord and tenant** (New tenancy).

Notice to quit. *See* **Landlord and tenant** (Notice to quit).

Notice to terminate—

Business premises. *See* **Landlord and tenant** (Business premises—Notice by landlord to terminate tenancy).

Periodic—

Creation. *See* **Landlord and tenant** (Tenancy—Periodic tenancy—Creation).

Notice to quit—

Validity. *See* **Landlord and tenant** (Validity of notice to quit—Periodic tenancy).

Protected—

Possession. *See* **Rent restriction** (Possession).

Protected. *See* **Rent restriction** (Protected tenancy).

Regulated. *See* **Rent restriction** (Regulated tenancy).

Rent. *See* **Landlord and tenant** (Rent).

Resulting trust. *See* **Trust and trustee** (Constructive trust—Tenancy agreement).

Statutory—

Transmission on death of tenant. *See* **Landlord and tenant** (Tenancy—Tenancy by estoppel—

Transmission of statutory tenancy on death of tenant).

Surrender. *See* **Landlord and tenant** (Surrender of tenancy).

Termination. *See* **Landlord and tenant** (Tenancy—Termination).

Unincorporated association—

Status. *See* **Unincorporated association** (Status—Separate entity—Landlord's opposition to grant of new tenancy).

Wartime—

Creation. *See* **Landlord and tenant** (Tenancy—Creation—Wartime).

Weekly—

Implied covenant—

Repair. *See* **Landlord and tenant** (Repair—Implied covenant—Weekly tenancy).

Weekly contractual tenancy—

Divorce—

Property adjustment order. *See* **Divorce** (Property—Adjustment order—Meaning of property—Tenancy—Weekly contractual tenancy).

Yearly—

Presumption of. *See* **Landlord and tenant** (Tenancy—Duration—Presumption of yearly tenancy).

TENANT FOR LIFE

Powers. *See* **Settlement** (Powers of tenant for life).

TENANT IN TAIL

Infant—

Sale of infant's entailed interest to tenant for life. *See* **Trust and trustee** (Variation of trust by the court—Infant's interests—Tenant in tail in remainder).

TENANTS' ASSOCIATION

Inducement to commit breach of contract—

Tort—

Justification. *See* **Tort** (Inducement to commit breach of contract—Justification—Tenants' association).

TENANTS IN COMMON

Gift—

Will—

Gift over on death of all tenants in common. *See* **Will** (Gift—Gift over—Gift to tenants in common for life).

Sale of land—

Specific performance. *See* **Specific Performance** (Sale of land—Tenants in common).

Trust in will to sell and divide proceeds among beneficiaries—

Nature of beneficiaries' interests. *See* **Trust and trustee** (Trust for sale—Realty—Express trust—Trust in will to sell and divide proceeds among beneficiaries—Nature of beneficiaries' interests—Tenants in common of proceeds of sale).

Will—

Forfeiture clause—

Alienation of interest. *See* **Will** (Forfeiture clause—Alienation of interest—Absolute gift to four sons as tenants in common).

TENDENCY TO DEPRAVE OR CORRUPT

Obscene publications. *See* **Criminal law** (Obscene publications—Tendency to deprave or corrupt).

TENDER

Acceptance of tender—

Sale of land. *See* **Sale of land** (Acceptance of tender).

TERMINATION

Compensation—

Workmen's compensation. *See* **Workmen's compensation** (Termination of compensation).

Connivance—

Divorce. *See* **Divorce** (Connivance—Termination).

Partnership. *See* **Partnership** (Dissolution).

Tenancy. *See* **Landlord and tenant** (Tenancy—Termination of tenancy).

TERRITORIAL ARMY

Unit—

Dissolution—

Distribution of surplus assets. *See* **Unincorporated association** (Dissolution—Distribution of surplus assets among members—Body having statutory powers to own property—Territorial Army unit).

TERRITORIAL WATERS

Magistrates' jurisdiction—

Broadcasting. *See* (Magistrates (Jurisdiction—Implied jurisdiction from enactment creating offence—Territorial waters).

TEST

Driving—

Conduct of test. *See* **Road traffic** (Driving licence—Test conducted in accordance with regulations).

Disqualified driver. *See* **Road traffic** (Disqualification for holding licence—Test of competence to drive).

TEST CERTIFICATEVehicle. *See* **Road traffic** (Test certificate).**TESTAMENTARY DISPOSITION***See* **Will** (Testamentary disposition).**TESTATOR**

Alteration of will—

Expressed intention to alter will—

Delay in carrying out intention—Conditional revocation. *See* **Will** (Revocation—Conditional revocation—Expressed intention to alter will—Delay in carrying out intention).

Domicile. *See* **Will** (Testator—Domicile).

Execution of will—

Place of testator's signature. *See* **Will** (Execution—Place of testator's signature).

Legacy to hospital. *See* **National Health Service** (Legacy to hospital).

Signature of will—

Attestation. *See* **Will** (Attestation—Witnesses—Presence while testator signing will).

Soldier or mariner. *See* **Will** (Soldier's or mariner's privileged will).Soundness of mind. *See* **Will** (Testator—Soundness of mind).**TESTIMONIAL**

Income tax on testimonial payment. *See* **Income tax** (Emoluments from office or employment—Receipt 'from' employment—Testimonial—Payment by way of testimonial to mark exceptional achievement in performance of services).

THALIDOMIDE

Personal injury—

Damages. *See* **Damages** (Personal injury—Thalidomide children).

THEATRE

Actor—

Part-time teacher at drama school—

National insurance. *See* **National insurance** (Employed person—Contract of service—Part-time teacher at drama school).

Cinema. *See* **Cinema**.

Licence for sale and consumption of intoxicating liquor—

Exemption from need for justices' licence—

Special hours certificate—Application. *See* **Licensing** (Special hours certificate—Application—Who may apply).

Licence for the performance of stage plays—

Renewal—

Condition attached prohibiting theatre from selling intoxicating liquor or tobacco—Rules for ensuring order and decency—Proximity to theatre of a licensed house—Unconditional licence held for many years without complaint—Neighbouring theatre with conditional licence refused unconditional licence—Matters to be considered by and procedure of licensing authority on application to renew licence—Theatres Act 1843, s 9. **R v County Licensing (Stage Plays) Committee of Flint County Council, ex parte Barrett** [1957] 1 112, CA.

Producer—

Negligence—

Prevention of theft. *See* **Negligence** (Duty to take care—Prevention of theft—Theatrical producer).

Stage play—

Causing presentation of unlicensed play or part of play—

Cause—Disobedience to stage directions by actor, contrary to orders of licensee of theatre—Liability of licensee—Theatres Act 1843, s 15. **Lovelace v Director of Public Prosecutions** [1954] 3 481, QBD.

Substantial addition to script as licensed—Liability of absent producer—Theatres Act 1843, s 15. **Grade v Director of Public Prosecutions** [1942] 2 118, KBD.

THEFTCrime. *See* **Criminal law** (Theft).

Information—

Specified articles. *See* **Magistrates** (Information—Theft—Information charging accused with stealing specified articles).

THEFT (cont)

Prevention—

Duty of care to prevent theft. *See* **Negligence** (Duty to take care—Prevention of theft).**THIRD PARTY**

Appeal—

Appeal by third party in main action. *See* **Court of Appeal** (Third party—Appeal against judgment in favour of plaintiff in main action).Costs. *See* **Costs** (Third party).

Custody application—

Divorce proceedings, in. *See* **Divorce** (Custody—Application—Application by third party for custody).

Damages—

Breach of contract. *See* **Contract** (Damages for breach—Third party).**THIRD PARTY INSURANCE**

Motor insurance—

Compulsory third-party insurance. *See* **Motor insurance** (Compulsory insurance against third party risks).Rights of third parties against insurers. *See* **Motor insurance** (Rights of third parties against insurers).**THIRD PARTY PROCEDURE**

Appeal—

Respondent's notice—

Service on third party. *See* **Court of Appeal** (Respondent's notice—Service on third party).*See* **Practice** (Third party procedure).**THIRD PARTY RISKS**Motor insurance. *See* **Motor insurance** (Compulsory insurance against third party risks).**THISTLES**

Nuisance—

Thistledown blown on to neighbouring land. *See* **Nuisance** (Natural processes—Things naturally on defendant's land—Thistles—Thistledown blown on to neighbouring land).**THREAT**

Admission or confession obtained by threat—

Admissibility in criminal proceedings. *See* **Criminal evidence** (Admissions and confessions—Threat).

Groundless threat of infringement proceedings—

Action under Registered Designs Act 1949 to restrain threat of proceedings. *See* **Design** (Action to restrain threat of proceedings for infringement).Robbery. *See* **Criminal law** (Robbery—Threat).

Witness—

Obstructing course of justice. *See* **Criminal law** (Obstructing course of justice—Witness—Intimidation).**THREATENING LETTER***See* **Criminal law** (Threatening letters).**THRESHING MACHINE**Duty to fence dangerous parts. *See* **Agriculture** (Threshing machine—Fencing of dangerous parts).**TIDAL LANDS**

Drainage rates—

Exemption. *See* **Land drainage** (Drainage rates—Exemption).**TIDAL WATERS**

Navigation—

Public right to navigate. *See* **Water and watercourses** (Navigation—Public right to navigate tidal waters).**TIMBER**Contract for sale of. *See* **Agriculture** (Timber—Contract for sale).

Rights—

Concession—

Gold Coast. *See* **West Africa** (Gold Coast—Concession of timber rights).**TIMBER CONTROL**

Application of restrictions—

Application to purchaser to whom property in timber had passed before restrictions passed—
Delivery after restrictions in force—Whether restrictions apply—Control of Timber (No 1) Order 1939 (S R & O 1939 No 1031), art 1—Control of Timber (No 5) Order 1939 (S R & O 1939 No 1329), arts 1, 2, 3. **Rappaport v London Plywood and Timber Co Ltd** [1940] 1 576, KBD.**TIME**

Advertisement of petition—

Compulsory winding-up of company. *See* **Company** (Compulsory winding-up—Advertisement of petition—Time).

TIME (cont)

- Affiliation order—
 - Application for. *See* **Affiliation** (Application for order—Time for application).
- Appeal—
 - Court of Appeal. *See* **Court of Appeal** (Time for appeal).
 - Courts-Martial Appeal Court. *See* **Court-martial** (Appeal—Application for leave to appeal—Time limit).
- Kenya—
 - Need for judgment to be drawn up in formal decree before appeal—Time limit. *See* **Kenya** (Appeal—Judgment to be drawn up in formal decree before appeal—Time limit).
- Arbitration—
 - Time limit for reference—
 - Breach of contract—Sale of goods. *See* **Sale of goods** (Breach of contract—Time limit for reference to arbitration).
- Assessment—
 - Capital gains tax—
 - Time limit. *See* **Capital gains tax** (Time limit for assessment).
- Bill of exchange—
 - Notice of dishonour. *See* **Bill of exchange** (Notice of dishonour—Time).
- Bingo club licence—
 - Application for. *See* **Gaming** (Licensing of premises—Application for licence—Time limit).
- Business premises—
 - Application for new tenancy out of time. *See* **Landlord and tenant** (Business premises—Application for new tenancy—Application out of time).
- Commencement of action—
 - County court. *See* **County court** (Action—Commencement of action—Time).
- Commission of offence—
 - Difference between standard local time and Greenwich mean time—
 - Charge under Army Act 1955. *See* **Court-martial** (Civil offence—Time of commission of offence—Charge under statute commencing Jan 1 1957—Difference between standard local time and Greenwich mean time).
- Compensation for compulsory acquisition—
 - Time for assessment. *See* **Compulsory purchase** (Compensation—Assessment—Time for assessment).
- Compulsory purchase order—
 - Time limit for application to quash order. *See* **Compulsory purchase** (Compulsory purchase order—Application to quash order—Time limit).
- Computation—
 - Divorce—
 - Separation—Period of separation. *See* **Divorce** (Separation—Period of separation).
 - Duration of specified period—
 - Limitation period—Arbitrations. *See* **Arbitration** (Commencement—Period of limitation—Date from which time runs).
 - Limitation period—Day on which cause of action arising or offence committed excluded. **Marren v Dawson Bentley & Co Ltd** [1961] 2 270, Assizes.
 - Month—Devise of house to wife if she should be living at the expiration of a period of three months from the testator's death—Calendar months—Period reckoned in complete days—Date of testator's death excluded—Law of Property Act 1925, s 61. **Re Figgis (decd)** [1968] 1 999, ChD.
 - Seven clear days—Company—Compulsory winding-up—Advertisement of petition. *See* **Company** (Compulsory winding-up—Advertisement of petition—Time—Seven clear days before hearing).
 - Three weeks—Company—Compulsory winding-up—Inability of company to pay debts. *See* **Company** (Compulsory winding-up—Inability of company to pay debts—Neglect to pay sum due to creditor for three weeks after sum demanded—Time—Computation of period of three weeks).
 - Period within which an act may be done—
 - New tenancy of business premises for three years 'from' 1st May 1963—Rent payable in advance—First payment on 1st May 1963—Notice terminating tenancy on 30th April 1966—Validity of notice—Landlord and Tenant Act 1954, s 25(4). **Ladyman v Wirral Estates Ltd** [1968] 2 197, Assizes.
 - Not less than four weeks before the date on which—Exclusive of both first and last days—Rent Act 1957, s 16. **Thompson v Stimpson** [1960] 3 500, QBD.
 - Period of 'not less than four weeks before the date on which'—
 - Weekly tenancy determinable by notice. *See* **Landlord and tenant** (Validity of notice to quit—Periodic tenancy—Weekly tenancy).
- Service of notice—
 - Motoring offence—Notice of intended prosecution—Service within 14 days. *See* **Road traffic** (Notice of intended prosecution—Service of notice—Service within 14 days—Computation of time).
- Condition of contract—
 - Sale of goods. *See* **Sale of goods** (Time of performance).
- Contract—
 - Time of the essence. *See* **Contract** (Time—Time of the essence).
- Conveyance—
 - Time of the essence. *See* **Sale of land** (Notice to complete—Notice making time of the essence).

TIME (cont)**Crime—**

Time limit for prosecution—

Court-martial—Civil offence—Indecent offences between males. *See* **Court-martial** (Civil offence)—Time limit—Sexual offences between males).

Time of commission of offence—

Difference between standard local time and Greenwich mean time—Charge under Army Act 1955. *See* **Court-martial** (Civil offence)—Time of commission of offence—Charge under statute commencing Jan 1 1957—Difference between standard local time and Greenwich mean time).**Customs—**Time limit for institution of proceedings for offences. *See* **Customs and excise** (Institution of proceedings for offences—Time limit).**Decree absolute—**

Time limit for appeal against decree absolute—

Nullity. *See* **Nullity** (Appeal—Time).**Delay—**Dismissal of action for. *See* **Practice** (Dismissal of action for want of prosecution—Delay).**Delivery—**

Sale of goods—

Conditions inhibiting delivery imposed by vendor's supplier. *See* **Sale of goods** (Delivery—Conditions inhibiting delivery imposed by vendor's supplier).**Directions for removal of Commonwealth immigrant—**Immigrant refused admission to United Kingdom. *See* **Commonwealth immigrant** (Admission—Refusal of admission—Removal of immigrant—Directions for removal—Time for giving directions).**Divorce—**

Answer—

Leave to file answer out of time. *See* **Divorce** (Practice—Answer—Time—Leave to file answer out of time).Duration of specified period. *See* **Computation**—Duration of specified period, *ante*.

Duration of specified period—

Motor insurance cover note—

Commencement 11.45 a.m. on 2nd December 1959—Cover note expressed to be valid for 15 days from the commencement date of risk—Period of cover was 15 days from midnight on 2nd December 1959. **Cartwright v MacCormack** [1963] 1 11, CA.

Duration of specified period—

Period 'beginning with the date of'—

Writ of summons issued on 10th September 1965 and served on 10th September 1966—Validity of writ for the purpose of service for 12 months beginning with the date of its issue—Whether service out of time—RSC Ord 6, r 8(1). **Trow v Ind Coope (West Midlands) Ltd** [1967] 2 900, CA.Essence of contract. *See* **Contract** (Time—Time of the essence).

Extension of time—

Answer—

Divorce. *See* **Divorce** (Practice—Answer—Time—Leave to file answer out of time).**Appeal—**Court of Appeal. *See* **Court of Appeal** (Time for appeal—Extension of time for appeal).Courts-Martial Appeal Court. *See* **Court-martial** (Appeal—Application for leave to appeal—Time limit—Extension of time).House of Lords—Application for leave to appeal from High Court. *See* **House of Lords** (Appeal from High Court—Application for leave to appeal—Time—Extension of time).Immigration. *See* **Immigration** (Appeal—Time limit for appealing—Notice not given within limitation period).Licensing appeal. *See* **Licensing** (Appeal—Notice of appeal—Service—Time of service—Extension of time).Matrimonial proceedings—Appeal from magistrates' courts to Divisional Court. *See* **Husband and wife** (Summary proceedings—Appeal to Divisional Court—Extension of time).Statutory power necessary to enable time to be extended beyond statutory limit. *See* **Licensing** (Appeal—Notice of appeal—Service—Time of service—Extension of time).**Arbitration—**Commencement of arbitration. *See* **Arbitration** (Commencement—Extension of time fixed by agreement).Conflict of laws. *See* **Conflict of laws** (Contract—Arbitration—Time-bar—Extension of time).**Bankruptcy—**Appeal against adjudication. *See* **Bankruptcy** (Appeal—Appeal against adjudication—Extension of time for appealing).Building contract. *See* **Building contract** (Extension of time).Case stated. *See* **Case stated** (Limitation of time—Application for extension of time).**Certiorari—**Application for. *See* **Certiorari** (Time for application—Extension of time).**Compulsory purchase order—**Submission under Housing Acts for confirmation. *See* **Housing** (Compulsory purchase—Confirmation of order by Minister—Time for submission—Extension of time).Conditional leave to defend after judgment entered. *See* **Practice** (Time—Extension of time—Conditional leave to defend after judgment entered).**Divorce—**Application for rehearing. *See* **Divorce** (Rehearing—Time—Extension of time for applying for rehearing).Family provision application. *See* **Family provision** (Time for application—Extension).

TIME (cont)

Extension of time (cont)—

Jurisdiction—

County court. *See* **County court** (Jurisdiction—Inherent jurisdiction—Jurisdiction to amend order—Extension of time).

Legal aid certificate. *See* **Legal aid** (Certificate—Extension of time for issue of full certificate).

Limitation of actions. *See* **Limitation of action** (Extension of time limit).

Maintenance application—

Surviving spouse, by. *See* **Divorce** (Financial provision—Deceased former spouse—Maintenance for surviving spouse out of deceased's estate—Application—Interim order—Extension of time for applying).

Offences under Immigration Act 1971. *See* **Immigration** (Illegal entry and similar offences—Time limit for prosecution).

Patent appeal. *See* **Patent** (Appeal to Court of Appeal—Application for leave to appeal—Time for application—Extension of time for service of notice of appeal).

Registration of company charge. *See* **Company** (Charge—Registration—Extension of time).

Renewal of writ—

Admiralty action in rem. *See* **Admiralty** (Action in rem—Writ—Renewal—Extension of time).

Retrospective extension of time—

Building contract. *See* **Building contract** (Extension of time—Retrospective extension of time).

Writ. *See* **Writ** (Extension of validity).

Variation of maintenance agreement—

Application by surviving spouse. *See* **Husband and wife** (Variation of maintenance agreement—Death of party—Application by surviving party after death of the other party to the agreement).

Family provision—

Application. *See* **Family provision** (Time for application).

Fatal accident claim. *See* **Fatal accident** (Action—Time).

Guarantee—

Issue of guarantee—

Contract silent as to time when guarantee to be issued. *See* **Guarantee** (Time for issue of guarantee—Contract silent as to time when guarantee to be issued).

Payment under. *See* **Guarantee** (Payment under—Period of limitation).

Income tax—

Additional assessment—

Time limit. *See* **Income tax** (Additional assessment—Time limit).

Recovery of penalty—

Time limit. *See* **Income tax** (Penalty—Recovery—Time limit).

Special contribution. *See* **Special contribution** (Additional assessment—Limitation of time for making).

Interlocutory appeal—

Extension of time. *See* **Court of Appeal** (Interlocutory appeal—Time—Leave to extend time to appeal).

Interpleader—

Summons. *See* **Interpleader** (Application—Time).

Judicial acts—

Relation back to earliest moment of day on which done—

Divorce proceedings—Notice of application to make decree nisi absolute received by registrar on same day as, but after, respondent spouse's death—Purported filing of notice on that day—Whether doctrine of relation back had application to give effect to decree absolute as from the earliest moment of the day on which notice was filed. *Re Seaford (decd)* [1968] 1 482, CA.

Lapse of time—

Amounting to lapse of offer. *See* **Contract** (Offer and acceptance—Offer—Lapse of offer—Lapse by reason of time).

Licence—

Hearing of application for. *See* **Licensing** (Justices—Hearing of application for licence—Time).

Limitation—

Arbitration—

Commencement—Charterparty. *See* **Arbitration** (Commencement—Charterparty—Time—Bar).

Case stated. *See* **Case stated** (Limitation of time).

Destruction of obscene publications. *See* **Criminal law** (Obscene publications—Destruction—Limitation of time).

Limitation of action. *See* **Limitation of action**.

Magistrates. *See* **Magistrates** (Limitation of time).

Majority verdict in criminal trial—

Time to elapse before acceptance. *See* **Jury** (Majority verdict—Time to elapse before majority verdict accepted).

Notice—

Commonwealth immigrant—

Notice of refusal of admission to United Kingdom. *See* **Commonwealth immigrant** (Admission—Refusal of admission—Notice of refusal—Time within which notice to be given).

Notice of dishonour—

Bill of exchange. *See* **Bill of exchange** (Notice of dishonour—Time).

Notice of intended prosecution—

Motoring offence—Service within 14 days—Computation of time. *See* **Road traffic** (Notice of intended prosecution—Service of notice—Service within 14 days—Computation of time).

TIME (cont)

Option—

Renewal of lease—

Exercise of option. *See* **Landlord and tenant** (Renewal of lease—Option—Time for exercise of option).

Payment—

Bank—

Transfer order. *See* **Bank** (Payment—Time of payment—Transfer order).Payment order. *See* **Bank** (Payment—Time of payment—Payment order).

Payment out of court—

Application for. *See* **Practice** (Payment out of court—Application—Time for application).Performance of contract for sale of land. *See* **Sale of land** (Condition—Time for performance).

Period—

Computation. *See* **Computation, ante**.

Policy—

Marine insurance. *See* **Marine insurance** (Time policy).

Prosecution—

Food and Drugs Act, under. *See* **Food and drugs** (Offence—Prosecution—Limitation of time).

Reasonable time—

Performance of contract in—

Implied term. *See* **Contract** (Implied term—Performance within reasonable time).Repurchase in. *See* **Hire-purchase** (Recourse agreement—Obligation to repurchase goods if hire-purchase agreement terminated—Reasonable time).

Recovery of arrears—

Tithe and tithe rentcharge. *See* **Tithe and tithe rentcharge** (Arrears—Recovery—Limitation of time for recovery).Recovery of land. *See* **Limitation of action** (Land—Recovery).

Registration—

Restrictive trading agreement. *See* **Restrictive trade practices** (Registration of agreement—Time for registration).

Renewal of lease—

Option—

Exercise of option. **Landlord and tenant** (Renewal of lease—Option—Time for exercise of option).

Rent—

Review—

Failure to comply with time limits. *See* **Landlord and tenant** (Rent—Review—Failure to comply with time limits).

Time at which rent becomes due—

Quarterly rent. *See* **Landlord and tenant** (Rent—Time at which rent becomes due—Quarterly rent).

Rent review clause—

Time limit for requiring review. *See* **Landlord and tenant** (Rent—Review—Failure to comply with time limits).

Repair—

Landlord and tenant—

Time when obligation to repair arises. *See* **Landlord and tenant** (Repair—Landlord's covenant—Time when obligation to repair arises).

Rescission of winding-up order—

Application for. *See* **Company** (Compulsory winding-up—Winding-up order—Rescission—Application for rescission).

Rules of court—

Period of time fixed by rules or by order etc for doing any act—

Period to be reckoned in accordance with rule—Period of time for doing act—Meaning—Applicability to non-mandatory rules or orders—Rule or order prescribing a time within which person must do specified act if he wishes to do so—Whether period of time to be reckoned in accordance with rule—RSC Ord 3, r 2. **Tanglecroft Ltd v The Hemdale Group Ltd** [1975] 3 599, CA.

Sale of land—

Time limit for requisitions on title. *See* **Sale of land** (Requisitions on title—Time limit).

Service—

Notice to quit. *See* **Landlord and tenant** (Validity of notice to quit—Time for service).Writ. *See* **Practice** (Service—Time for service of writ).

Sunday—

Injunction. *See* **Injunction** (Sunday).

Trial—

Commencement—

Criminal trial. *See* **Criminal law** (Trial—Commencement of trial—Time limit).

Unfair industrial practice—

Complaint—

Time limit. *See* **Industrial relations** (Unfair industrial practice—Complaint—Time limit).

Variation of settlement—

Application for variation—

Application out of time. *See* **Variation of settlement** (Application for variation—Application out of time).

Writ—

Issue—

Limitation period—Extension of limitation period. *See* **Writ** (Issue—Time).Service. *See* **Practice** (Service—Time for service of writ).**TIME CHARTER***See* **Shipping** (Time charterparty).

TIP

Taxi-cab driver—

Income tax. *See* **Income tax** (Emoluments from office or employment—Voluntary payment—Payment arising in ordinary course of taxpayer's employment—Taxi-cab driver—Tips).

TITHE AND TITHE RENTCHARGE

Annuity—

Apportionment—

Owner of land—Highway authority—Liability to bear apportioned part of redemption annuity in respect of land occupied by highway—Tithe Act 1936, s 10(1), s 17(1)—Law of Property Act 1925, s 7(1) (as amended by Law of Property (Amendment) Act 1926, s 7, Sch). **Tithe Redemption Commission v Runcorn Urban District Council** [1954] 1 653, CA.

Arrears—

Recovery—

Limitation of time for recovery—Excluded period—Limitation period expiring before the commencement of excluded period—Tithe Act 1936, ss 1, 4(1), 20. **Governors of Queen Anne's Bounty v Tithe Redemption Commission** [1938] 4 368, CA.

Order of county court for recovery before appointed day—Whether 'arrears' order for costs—Tithe Act 1891, s 2—Tithe Act 1936, s 20. **Queen Anne's Bounty v Tithe Redemption Commission** [1937] 3 515, ChD.

Extinguishment—

Compensation—

Deduction in respect of rates—No deduction to be made 'in the case of a rentcharge created in lieu of any corn rent which was free from rates, or a rentcharge which was otherwise free from rates'—'Was'—'Free from rates'—Only rentcharges free from legal liability to be rated at the time they were created to be free from deduction for rates—Tithe Act 1936, Sch I, Pt I, paras 3(a), 4. **Tithe Redemption Commission v The Governors of the Bounty of Queen Anne** [1946] 1 148, ChD.

Officer—Substantial detriment to his livelihood—Expectation of continuance in office—City of London (Tithes) Act 1947, s 16(1). **Price v City of London Corp** [1949] 2 642, CA.

Officer—Substantial detriment to his livelihood—Right to enquire into total income of office holder—City of London (Tithes) Act 1947, s 16(1). **Langham v City of London Corp** [1948] 2 1018, CA.

Right of devisee under will of testator dying in 1902—Tithe rentcharge included in bequest of life interest—Tithe Act 1936, s 7(1), Sch I, Pt I, para 5. *Re Lory's Will Trusts* [1950] 1 349, ChD.

Recovery of tithe rentcharge—

Application to county court—

No notice of opposition by landowner—Right of landowner to be heard—Tithe Act 1891, ss 2(1), (7), 3(1)—Tithe Rentcharge Recovery Rules 1891—1933, rr 5, 8. **Queen Anne's Bounty (Governors) v Pitt-Rivers** [1936] 2 161, KBD.

Redemption—

Annuity—

Land held by several owners—No apportionment of annuity—Liability of owner of part of land for annuity in respect of whole—Tithe Act 1936, ss 3(1), 16(1). **Tithe Redemption Commission v Brown** [1948] 1 752, CA.

Remission—Agricultural holding—'Annual value'—Inclusion of value of house—Income Tax Act 1918, Sch B, r 1(a)—Tithe Act 1936, s 14(2). **R v Jordan, ex parte Lutring** [1947] 2 875, KBD.

Tithe document—

Admissibility in evidence. *See* **Document** (Admissibility in evidence—Tithe document).

Tithe Redemption Commission—

Jurisdiction—

Annuity—Annuity substituted for tithe rentcharge—Whether commission have jurisdiction to decide whether land was subject to tithe rentcharge before the 'appointed day'—Tithe Act 1936, ss 3(1), 4(1)(2), 9, 39(3). **Tithe Redemption Commission v Wynne** [1943] 2 370, CA.

TITHE REDEMPTION COMMISSION

Tithe and tithe rentcharge. *See* **Tithe and tithe rentcharge** (Tithe Redemption Commission).

TITLE

Boxing title—

Slander of title. *See* **Slander of title** (Professional description—Boxing title—Defendant represented as holding title held by plaintiff).

Covenants for title—

Sale of land. *See* **Sale of land** (Covenants for title).

Denial of landlord's title—

Forfeiture of lease. *See* **Landlord and tenant** (Forfeiture of lease—Denial of landlord's title).

Documents of title—

Deposit—

Charge—Common law retaining lien. *See* **Lien** (Deposit of documents of title).

Film—

Registration. *See* **Cinema** (Film—Title—Registration).

TITLE (cont)

- Hire-purchase agreement—
 - Illegality of agreement—
 - Sale of goods. *See* **Sale of goods** (Title—Illegality of related agreement).
- Honour—
 - Succession—
 - Binding effect of declaration of legitimacy of claimant on Crown. *See* **Legitimation** (Declaration of legitimacy—Binding effect—Crown—Peerage claim).
- Land—
 - Acknowledgment. *See* **Limitation of action** (Acknowledgment—Title to land).
 - Adverse possession. *See* **Limitation of action** (Land—Adverse possession).
 - Order for production of register of title. *See* **Land registration** (Production of register of title—Order for production).
 - Rectification of land register affecting title of proprietor in possession. *See* **Land registration** (Rectification of register—Rectification affecting title of proprietor in possession).
 - Royal palace at Lagos. *See* **Nigeria** (Title to property—Royal palace at Lagos).
- Landlord and tenant—
 - Right of tenant to question landlord's title. *See* **Landlord and tenant** (Title—Right of tenant to question landlord's title).
- Lease—
 - Breach of agreement for lease—
 - Defect in title—Damages. *See* **Landlord and tenant** (Agreement for lease—Breach—Damages—Breach through defect in title).
- Legal proceedings—
 - Appeals to House of Lords. *See* **House of Lords** (Leave to appeal—Petition for leave to appeal—Case title).
- Motor vehicle—
 - Private purchaser without notice of hire purchase agreement. *See* **Hire-Purchase** (Title—Motor vehicle—Private purchaser without notice of hire-purchase agreement under which owner reclaiming vehicle).
- Obligation binding on successors in title—
 - Right of pre-emption—
 - Registration as land charge. *See* **Land charge** (Registration—Obligation affecting land—Obligation binding on successors in title).
- Possessory title—
 - Acquisition by statutory tenant—
 - Acquisition against mesne landlord. *See* **Rent restriction** (Statutory tenant—Acquisition of possessing title against mesne landlord).
- Property—
 - Defect in title—
 - Negligence of solicitor. *See* **Solicitor** (Negligence—Damages—Purchase of freehold property by client—Defect in title).
- Requisitions on title—
 - Sale of land. *See* **Sale of land** (Requisitions on title).
- Sale of goods. *See* **Sale of goods** (Title).
- Sale of land—
 - Delay in completion through vendor's default in deducing title—
 - Interest on unpaid purchase money. *See* **Sale of land** (Interest on unpaid purchase money—Possession before completion—Delay in completion through vendor's default in deducing title).
 - Generally. *See* **Sale of land** (Title).
- Slander. *See* **Slander of title**.
- Transfer—
 - Sale of goods. *See* **Sale of goods** (Transfer of title).
- Trustee in bankruptcy. *See* **Bankruptcy** (Trustee in bankruptcy—Title of trustee).
- Voidable title—
 - Sale of goods. *See* **Sale of goods** (Voidable title).
- Writ—
 - Defect—
 - Amendment. *See* **Writ** (Amendment—Defect in title).

TITLE DEEDS

- Solicitor—
 - Lien. *See* **Solicitor** (Lien—Title deeds).

TITLE OF PROCEEDINGS

- See* **Practice** (Title of proceedings).

TOBACCO

- Sale by unlicensed person—
 - Aiding and abetting of sale by purchaser—
 - Purchaser buying tobacco from unlicensed person—Purchaser subsequently finding tobacco intended only for use outside United Kingdom—Seller agreeing to take tobacco back—Purchaser failing to return tobacco—Tobacco Act 1842, s 13. *Sayce v Coupe* [1952] 2 715, QBD.

TOBAGO

- Trinidad and Tobago. *See* **Trinidad and Tobago**.

TOLLS

Ancient demesne—

Privileges of tenants in manor of ancient demesne—

Exemption from toll for use of quay—Limits of privileges—Manor of Bosham—Who was entitled to privileges—Whether tenant of manor entitled to use quay and foreshore free of charge either for private purposes or in the course of his business of repairing boats. *Iveagh (Earl) v Martin* [1960] 2 668, QBD.

Franchise tolls—

Bridge—

Crown franchise and exemption—Kenya Protectorate. *Nyali Ltd v Attorney-General* [1956] 2 689, HL.

Market—

Rating. *See Rates* (Valuation—Market).

TOMB

Funeral accoutrement associated with tomb—

Sale—

Faculty jurisdiction. *See Ecclesiastical law* (Faculty—Jurisdiction—Sale of chattel—Monument—Funeral accoutrement associated with tomb).

TOMBSTONE

Inscription on—

Charge for—

Burial board, by. *See Burial* (Burial ground—Charge for monumental inscription—Right of burial board to charge for permission to cut inscriptions on gravestone).

TOOL

Powered hand-tool—

Use in building operations—

Duty to fence. *See Building* (Building operations—Fencing of machinery—Dangerous machinery—Powered hand-tool).

TORT

Abroad—

Damages—

Assessment. *See Conflict of laws* (Tort—Damages—Assessment).

Actions founded on—

Limitation of action. *See Limitation of action* (When time begins to run—Actions of tort).

Agent—

Liability of principal. *See Agent* (Liability of principal—Tort).

Animal. *See Animal*.

Availability of defence—

Criminal conviction of defendant—

Judgment on admission of facts—Assault resulting in death—Defendant having pleaded guilty to manslaughter—Action by deceased's widow—Defendant admitting assault and conviction but alleging defences to action—Whether defendant's admissions debar him from raising defences—Whether widow entitled to judgment on pleadings—RSC Ord 27, r 3. *Murphy v Culhane* [1976] 3 533, CA.

Cause of action—

Contempt of court—

Exercise of contractual right—Service of notice to quit by landlord on tenant—Malicious service in circumstances amounting to contempt of court—Notice valid exercise of contractual right—Whether contempt founding cause of action in tort. *Chapman v Honig* [1963] 2 531, CA.

Contribution between joint tortfeasors—

*Claim for contribution—Whether statutory claim for contribution between joint tortfeasors is a cause of action in tort. *Harvey v R G O'Dell Ltd (Galway third party)* [1958] 1 657, QBD.

Conflict of laws. *See Conflict of laws* (Tort).

Conspiracy to commit tort—

Criminal liability. *See Criminal law* (Conspiracy—Unlawful act—Tort).

Contribution between joint tortfeasors—

Action against two defendants—

Action against second defendants dismissed for want of prosecution—First defendants entitled to contribution from second defendants—Law Reform (Married Women and Tortfeasors) Act 1935, s 6(1)(c). *Hart v Hall and Pickles Ltd* [1968] 3 291, CA.

Action against second defendant not commenced within statutory period—First defendant's right to contribution from second defendant—Law Reform (Married Women and Tortfeasors) Act 1935, s 6(1)(c). *Morgan v Ashmore, Benson, Pease & Co Ltd* [1953] 1 328, Assizes. *George Wimpey & Co Ltd v British Overseas Airways Corp* [1954] 3 661, HL.

One defendant found not negligent—Not a tortfeasor—No basis for claim for contribution by other defendant—Law Reform (Married Women and Tortfeasors) Act 1935, s 6(1)(c). *Johnson v Cartledge and Matthews (Matthews, third party)* [1939] 3 654, KBD.

Assessment—

Absence of party—Assessment in absence of party possibly liable for contributory negligence—Law Reform (Married Women and Tortfeasors) Act 1935, s 6(2). *Maxfield v Llewellyn* [1961] 3 95, CA.

Claim by defendant against third party—

Assessment of contribution by third party—Law Reform (Married Women and Tortfeasors) Act 1935, s 6. *Burnham v Boyer and Brown* [1936] 2 1165, KBD.

TORT (cont)

Contribution between joint tortfeasors (cont)—

Husband administrator of wife's estate—

Claim by third person against husband for contribution in respect of liability arising out of wife's death—Loss of expectation of life—Right of wife to sue husband in tort—Married Women's Property Act 1882, s 12—Law Reform (Miscellaneous Provisions) Act 1934, s 1—Law Reform (Married Women and Tortfeasors) Act 1935, s 6—RSC Ord 25, rr 2, r 3, 4. **Chant v Read** [1939] 2 286, KBD.

Jurisdiction to apportion blame without special application—

Acquiescence in apportionment—Law Reform (Married Women and Tortfeasors) Act 1935, s 6(2). **Bell v Holmes** [1956] 3 449, Assizes.

Plaintiff's claims against both defendants settled in full by second defendant before trial—One plaintiff's name left on record—No evidence offered by plaintiff at trial—Jurisdiction of court to try issue between defendants as to contribution. **Calvert v Pick** [1954] 1 566, QBD.

Proceedings—Jurisdiction of Court of Appeal to vary proportions fixed by judge—Law Reform (Married Women and Tortfeasors) Act 1935, s 6(1)(c)(2). **Croston v Vaughan** [1937] 4 249, CA.

Master and servant joint tortfeasors—

Common law exemption—Servant not immune from contribution to master—Law Reform (Married Women and Tortfeasors) Act 1935, s 6(2). **Romford Ice & Cold Storage Co Ltd v Lister** [1957] 1 125, HL.

Negligence of servant resulting in servant's death and injury to another person—Action by injured person against master commenced nearly two years after grant of administration of deceased servant's estate—Third-party notice served by master on administratrix—Law Reform (Miscellaneous Provisions) Act 1934, s 1(1)(3)(4)—Law Reform (Married Women and Tortfeasors) Act 1935, s 6(1)(c). **Harvey v R G O'Dell Ltd (Galway third party)** [1958] 1 657, QBD.

Master's right to contribution by servant—

Complete indemnity—Negligence of servant—No negligence on part of master or other servants—Law Reform (Married Women and Tortfeasors) Act 1935, ss 6(1)(c), (2). **Semtex Ltd v Gladstone** [1954] 2 206, Assizes.

Master himself responsible for damage—Liability of hospital board for negligence of doctor—Law Reform (Married Women and Tortfeasors) Act 1935, s 6(2). **Jones v Manchester Corpn** [1952] 2 125, CA.

No appeal against one tortfeasor—

Duty of Court of Appeal—Law Reform (Married Women and Tortfeasors) Act 1935, s 6. **Hanson v Wearmouth Coal Co Ltd and Sunderland Gas Co** [1939] 3 47, CA.

No representative of dead joint tortfeasor's estate—

Power of court to appoint representative. **Lean v Alston** [1947] 1 261, CA.

Occupiers of public dry dock—

Breaches of statutory duty—Law Reform (Married Women and Tortfeasors) Act 1935, s 6(2). **Rippon v Port of London Authority and J Russell & Co (Port of London Authority, third party)** [1940] 1 637, KBD.

Settlement of action by one tortfeasor—

No admission of liability for damage by tortfeasor in settling action—Whether tortfeasor 'liable in respect of that damage'—Whether debarred from recovering contribution from second tortfeasor—Law Reform (Married Women and Tortfeasors) Act 1935, s 6(1)(c). **Stott v West Yorkshire Road Car Co Ltd** [1971] 3 534, CA.

Conversion. *See* **Conversion**.

Damages—

County court—

Transfer of action to High Court. *See* **County court** (Transfer of action—Transfer to High Court—Action founded on contract or tort).

Generally. *See* **Damages**.

Deceased persons—

Actions against estates—

Limitation period. *See* **Limitation of action** (Actions in tort against estates of deceased persons—Period of limitation).

Detinue. *See* **Detinue**.

Exemption from liability in tort—

Crown. *See* **Crown** (Exemption from liability in tort).

False imprisonment. *See* **False imprisonment**.Fatal accident. *See* **Fatal accident**.

Friendly society by—

Action against trustees—

Competence. *See* **Friendly society** (Action against trustees—Tort).

High Court action—

Costs. *See* **Costs** (Tort—High Court action).

Husband's liability for wife's tort. *See* **Husband and wife** (Torts—Husband's liability for wife's tort).

Inducement to commit breach of contract—

Bona fide acts—

Defendant's actual or constructive knowledge of breach—Former servant of plaintiffs revealing secret process to defendants in breach of leaving agreement with plaintiffs—Belief of defendants that if process patentable it could not be secret. **British Industrial Plastics Ltd v Ferguson** [1940] 1 479, HL.

TORT (cont)

Inducement to commit breach of contract (cont)—

Indirect inducement—

Recommendation of federation of newsagents, a trade association of retailers, to members to stop sale of newspaper—Federation seeking to induce breach of contract between wholesalers and newspaper proprietors—Ignorance of terms of contracts between proprietors and wholesalers no defence where act done without caring whether breach of contract caused—Balance of convenience—Interlocutory injunction granted. **Daily Mirror Newspapers Ltd v Gardner** [1968] 2 163, CA.

Inference of intention—

Trade union—Officers of trade union knew of existence of labour only sub-contract, but not its precise terms—Industrial action by union to get sub-contract terminated by main contractors—Irreparable damage to sub-contractor—Interlocutory injunction granted. **Emerald Construction Co Ltd v Lowthian** [1966] 1 1013, CA.

Justification—

Tenants' association—Association inducing tenants to withhold rent—Alleged failure of common landlord to fulfil obligations under tenancy agreements—Remedy available at law—No justification for withholding rent. **Camden Nominees Ltd v Slack** [1940] 2 1, ChD.

Restrictive covenant—

Purchase of land for use in breach of restrictive covenant not building on land—Vendor had covenanted, as purchaser knew, not to cause or permit land to be used otherwise than for horse-racing etc—Vendor approached purchaser with a view to sale of land to purchaser for development for housing—Covenant would not be enforceable against purchaser after completion of sale—Whether purchaser had committed tort of inducing vendor to commit breach of covenant—Whether injunction would be granted. **Tophams Ltd v Sefton (Earl)** [1966] 1 1039, HL.

Unlawful means—

Absence of justification—Trade union instructing members not to handle appellants' barges—Breach pro tanto of members' contracts of employment when allocated under dock workers employment scheme—Customers of appellants caused thereby to break their contracts of hiring with appellants—No member of union employed by appellants—No trade dispute—Whether interlocutory injunction should be granted—Dock Workers (Regulation of Employment) Scheme 1947 (S R & O 1947 No 1189), Sch, para 8(4)(b)—Trade Disputes Act 1906, ss 3, 5(3). **J T Stratford & Son Ltd v Lindley** [1964] 3 102, HL.

Interference with contractual relations—

Unlawful means—

Recommendation by trade association to members to stop orders of newspaper—Recommendation deemed a restriction presumed contrary to public policy—Restrictive Trade Practices Act 1956, ss 6(7), 21(1). **Daily Mirror Newspapers Ltd v Gardner** [1968] 2 163, CA.

Interference with trade—

Unlawful means—

Restrictive trade practice—Resolution of trade association to restrict transport of goods to nominated transport contractor—Particulars of resolution furnished to Registrar of Restrictive Trading Agreements—Notice to restrain implementation of resolution—Whether resolution illegal as being contrary to public policy—Whether court entitled to make order in advance of declaration by Restrictive Practices Court that resolution void—Restrictive Trade Practices Act 1956, s 21(1)(as amended by Restrictive Trade Practices Act 1968, s 10(1)). **Brekkes Ltd v Cattel** [1971] 1 1031, ChD.

Intimidation—

Unlawful act—

Threat to break contract—Threat an unlawful act for purpose of establishing tort—Threat against person other than plaintiff—Threat made in order to cause damage to plaintiff—Trade unionists threatening strike action against employers unless plaintiff dismissed—Whether threat to break contract sufficient to constitute unlawful element in tort of intimidation. **Rookes v Barnard** [1964] 1 367, HL, **J T Stratford & Son Ltd v Lindley** [1964] 3 102, HL.

Joint tortfeasors—

Apportionment of liability—

Variation of apportionment by Court of Appeal. **Owners of the Steamship Ceramic v Owners of the Steamship Testbank** [1942] 1 281, CA.

Variation of apportionment on appeal—Limitation of jurisdiction. **Owners of Steamship or Vessel British Fame v Owners of Steamship or Vessel Macgregor** [1943] 1 33, HL.

Variation of apportionment on appeal—Limitation of jurisdiction—Same rule applicable to road collisions as to sea collisions. **Ingram v United Automobile Services Ltd** [1943] 2 71, CA.

Contribution. *See* Contribution between joint tortfeasors, *ante*.

Costs. *See* Costs (Joint tortfeasors).

Discharge—

Agreement not to sue one joint tortfeasor—Operation as discharge of other tortfeasors. **Apley Estates Co v De Bernaldes** [1947] 1 213, CA.

Interrogatories—

Administration of interrogatories by one tortfeasor to another—Necessity of notice. **Clayson v Rolls-Royce Ltd** [1950] 2 884, CA.

Judgment against one tortfeasor no bar to action against another person who would if sued have been held liable—

If sued—Action against two defendants—Judgment entered against first defendant—Issue of second defendant's liability remitted for new trial—Judgment against first defendant unsatisfied—Whether second defendant immune from judgment as person who has been sued—Civil Law Act (Singapore) s 11(1)(a). **Wah Tat Bank Ltd v Chan Cheng Kum** [1975] 2 257, PC.

TORT (cont)**Joint tortfeasors (cont)—**

Judgment against one tortfeasor no bar to action against another person who would if sued have been held liable (cont)—

Satisfaction of judgment a bar to proceedings—Evidence of satisfaction—Single action against joint tortfeasors—One tortfeasor submitting to judgment for agreed sum of damages—Plaintiff refusing to disclose whether judgment satisfied—Smaller sum of damages awarded against second tortfeasor—Whether plaintiff barred from executing judgment against second tortfeasor—Law Reform (Married Women and Tortfeasors) Act 1935, s 6(1). **Bryanston Finance Ltd v de Vries** [1975] 2 609, CA.

Jurisdiction of master—

Payment of proportion of liability—Jurisdiction of master to allow one defendant to offer to pay a proportion of any liability—Law Reform (Miscellaneous Provisions) Act 1935, s 6—RSC Ord 30, r 2. **Sigley v Hale** [1938] 3 87, CA.

Liability of one for act of other—

Each joint tortfeasor also separate tortfeasor—No liability for act of another save under doctrine of respondeat superior—Malice of master not imputed to servant. **Egger v Viscount Chelmsford** [1964] 3 406, CA.

Offer. See Practice (Joint tortfeasors—Offer).**Release or covenant not to sue—**

Cause of action for libel. *See* **Libel and slander** (Joint tortfeasors—Release or covenant not to sue).

Limitation of action. *See* **Limitation of action** (When time begins to run—Actions of tort).

Mentally disordered person—**Knowledge of nature and quality of act—**

Assault—No knowledge that act wrongful—Whether a defence to action. **Morriss v Marsden** [1952] 1 925, QBD.

Negligence. See Negligence.**Nuisance. See Nuisance.****Occupier's liability. See Occupier's liability.****Partnership—**

Liability of firm. *See* **Partnership (Tort)**.

Perjury—

Civil action. *See* **Criminal law** (Perjury—Civil action).

Personal injuries—**Master and servant—**

Liability to servant in contract or tort. *See* **Master and servant** (Liability of master—Contract or tort).

Procurement of breach of contract—**Trade union—**

Right to sue. *See* **Trade union** (Legal proceedings—Right of union to sue—Right to sue for procurement of breach of contract).

Solicitor—**Action for negligence—**

Cause of action. *See* **Solicitor** (Negligence—Cause of action—Contract or tort).

Trustee Savings Bank—

Action against bank. *See* **Trustee Savings Bank** (Action—Tort).

Vicarious immunity—**Immunity from tort—**

Whether authority for the doctrine of vicarious immunity from tort. **Scruttons Ltd v Midland Silicones Ltd** [1962] 1 1, HL.

Vicarious liability. See Vicarious liability.**Waiver—****Action on same facts based on contract—**

Action not proceeding to judgment—Subsequent action against bank for conversion—Whether initiation of proceedings based on contract constituting waiver of tort. **United Australia Ltd v Barclays Bank Ltd** [1940] 4 20, HL.

Watching and besetting premises. *See* **Nuisance** (Watching and besetting premises).

Wife's right to sue husband in tort. *See* **Husband and wife** (Torts—Right of wife to sue husband in tort).

TOTAL INCOME

Income tax. *See* **Income tax** (Total income).

TOTALISATOR

Dog racecourse. *See* **Gaming** (Totalisators on dog racecourses).

TOUTING

Street, in. *See* **Highway** (Street—Touting).

TOWAGE

Collision at sea. *See* **Shipping** (Collision—Towage).

Limitation of liability. *See* **Shipping** (Limitation of liability—Towage).

Salvage distinguished. *See* **Shipping** (Salvage—Definition—Distinction between towage and salvage).

Towage contract. *See* **Shipping** (Towage contract).

TOWER WAGON

Exemption from requirement of plating and test certificates. *See* **Road traffic** (Plating and test certificates for goods vehicles—Exemption—Tower wagon).

TOWN AND COUNTRY PLANNING

Access to highway—

Street—

Minimum width in local planning scheme—Carriageway giving access to building behind buildings fronting on highway—Whether a 'street'—Public Health Act 1875, s 4. **Cowan v Hendon Borough Council** [1939] 3 366, ChD.

Advertisement—

Advertisement in area to which planning scheme under Town and Country Planning Act 1932 applied—

Display before 1st August 1948—Validity of enforcement notice under Town and Country Planning (Control of Advertisements) Regulations 1948 (S 1 1948 No 1613), reg 23. **Dominant Sites Ltd v Hendon Borough Council** [1952] 2 899, QBD.

Display without express consent on business premises—

Business premises—Building normally used for specified purposes—'Business premises' not including forecourt or other land forming part of curtilage of building—Petrol service station—Station consisting of sales office, petrol pumps and concrete apron—Advertisements displayed on concrete apron in open air—Whether concrete apron part of building or whether forecourt forming part of curtilage of building—Town and Country Planning (Control of Advertisements) Regulations 1969 (S 1 1969 No 1532), reg 14(1)(3)(a). **Heron Service Stations Ltd v Coupe** [1973] 2 110, HL.

Restrictions on advertisements containing letters, figures, symbols, emblems or devices over certain height—Advertisements on public houses showing cigarette packet, man holding up glass of beer and beer glass—Objects depicted all in excess of permitted height—Whether objects depicted 'figures, symbols, emblems or devices'—Town and Country Planning (Control of Advertisements) Regulations 1969 (S 1 1969 No 1532), reg 14(2)(a). **McDonald v Howard Cook Advertising Ltd** [1971] 3 1249, QBD.

Hoarding—

Land specified in planning scheme as 'land to be protected in respect of advertisements'—Notice to remove hoarding—Other hoardings already on site prior to date of scheme—Notices already served in regard to other hoardings—Conditions to be considered in determining whether hoarding 'seriously injures' amenity of land—Town and Country Planning Act 1932, s 47. **More O'Ferrall Ltd v Harrow Urban District Council** [1946] 2 489, KBD.

Restriction on height of advertisement hoarding—Hoardings erected without submitting plans and sections to local authority—Advertisement separated into number of smaller pieces—Whether constituted 'hoarding'—Advertisements Regulation Act 1907, s 2(1). **Horlicks Ltd v Garvie** [1939] 1 335, KBD.

Structure—Advertising sign of sheet metal fixed to wall of old theatre—Manchester Corporation Act 1891, s 18(1). **Borough Billposting Co Ltd v Manchester Corp** [1948] 1 807, KBD.

Structure—Power of local authority to prohibit the use of a wall of dwelling-house for advertising purposes—Town and Country Planning Act 1932, s 47(5)(8)—Town and Country Planning (Interim Development) Act 1943, ss 5, 15, Sch I. **Mills & Rockleys Ltd v Leicester City Council** [1946] 1 424, KBD.

Licence—

Right of local authority to charge fee for grant of licence—'Under and subject to such terms and conditions to be therein prescribed as the corporation may deem proper'—Liverpool Corporation (General Powers) Act 1930, s 29. **Liverpool Corp v Arthur Maiden Ltd** [1938] 4 200, Assizes.

Powers of local authority to control advertisements—

Byelaws—Power to regulate exhibition of advertisements so as to affect injuriously amenities of public park—Byelaw prohibiting exhibition of advertisements near park—No reference to amenities—Validity of byelaw—Advertisements Regulation Act 1907, s 2. **Twickenham Corp v Solosigns Ltd** [1939] 3 246, KBD.

Agreement regulating development or use of land—

Caravan site—

Existing user rights—Agreement by site owner to limit number of structures on site to twenty-five—Proviso to agreement preserving 'any rights of whatever nature which the owner has or may have in the future' under the Act of 1947 or amending Acts 'or otherwise howsoever'—Subsequently planning permission granted on basis of existing user rights—Site licence granted for thirty-three caravans—Whether site could be used for twenty-five caravans only despite site licence for thirty-three caravans—Town and Country Planning Act 1947, s 25—Caravan Sites and Control of Development Act 1960, s 17(5). **Crittenden (Warren Park) Ltd v Surrey County Council** [1965] 3 917, ChD.

Agreement restricting planning in lieu of scheme—

Agreement alleged to have been with a committee of local authority—

Power of local authority to delegate to committee—Agreement relating to planning, development or user, but alleged to be more favourable to landowner than draft scheme—Whether interim development order required—Town and Country Planning Act 1932, ss 34, 48, 54—Local Government Act 1933, s 85. **Attorney-General (at the relation of Thomas) v Barnes Borough Council and Ranelagh Club Ltd** [1938] 3 711, ChD.

Agricultural land—

Refusal to permit construction of a sports stadium—

Overriding need of agriculture—Town and Country Planning Act 1932, s 10(5). **R v East Kesteven Rural District Council, ex parte Sleaford and District White City Sports Stadium Co** [1947] 1 310, KBD.

Amenity—

Notice to abate injury to amenity by condition of vacant site or other open land—

Building and surrounding yard used for business of car-breaking—Whether 'open land' included land within the curtilage of a building—Town and Country Planning Act 1947, s 33(1). **Stephens v Cuckfield Rural District Council** [1960] 2 716, CA.

TOWN AND COUNTRY PLANNING (cont)

Amenity (cont)—

Notice to abate injury to amenity by condition of vacant site or other open land (cont)—

Use of land in agricultural area as car dump—Established use since before 1947 but no express planning permission granted—Validity of notice—Town and Country Planning Act 1947, s 33(1). **Britt v Buckinghamshire County Council** [1963] 2 175, CA.

Ancient monuments. *See* Ancient monuments.

Appeal to Minister against refusal of permission for development—

Findings of fact by inspector accepted by Minister but not inspector's 'conclusions' or recommendation—

No opportunity afforded to applicant to make further representations—Appeal dismissed by Minister—Application to quash Minister's decision—Whether inspector's conclusions were also findings of fact—Town and Country Planning Appeals (Inquiries Procedure) Rules 1965 (S I 1965 No 453), r 12(2). **Lord Luke of Pavenham v Minister of Housing and Local Government** [1967] 2 1066, CA.

Local planning authority binding itself by agreement to resist development in area of Jodrell Bank—

Authority's decision refusing permission for development in the area void because of failure to comply with Act—Whether Minister properly seized of appeal—Minister entitled to deal with application *de novo*, or on footing that the authority had failed to notify applicant of an effective decision—Town and Country Planning Act 1962, ss 17(1), 23(4), 24. **Stringer v Minister of Housing and Local Government** [1971] 1 65, QBD.

Natural justice—

Appeal against refusal to allow development near to radio telescope at Jodrell Bank—Minister having general policy of discouraging development interfering with the efficient working of the radio telescope—Refusal of permission by Minister because development might interfere with the working of telescope—Minister entitled to have general policy on matters relevant to planning decisions provided policy did not preclude him from fairly judging the relevant issues in each case—Policy did not preclude fair consideration of appeal—No ground for quashing decision. **Stringer v Minister of Housing and Local Government** [1971] 1 65, QBD.

Notification of decision—

Decision in accordance with stated policy—Failure by Minister to exercise discretion properly in determination of appeal—Quasi-judicial function—*Delegatus non potest delegare*—Town and Country Planning Act 1962, ss 23, 179. **H Lavender and Son Ltd v Minister of Housing and Local Government** [1970] 3 871, QBD.

Reasons so obscurely stated as not to be good and sufficient reasons—Minister's decision dismissing appeal quashed—Town and Country Planning (Inquiries Procedure) Rules 1962 (S I 1962 No 1425), r 11(1). **Givaudan & Co Ltd v Minister of Housing and Local Government** [1966] 3 696, QBD.

Validity of Minister's action—

Application to High Court to challenge validity—Person aggrieved—Refusal by local planning authority of permission to develop land by digging chalk—Appeal to Minister against refusal under s 16 of Town and Country Planning Act 1947—Local inquiry held at which objections made and evidence given by four adjoining landowners—Inspector's recommendation to minister that appeal be dismissed on ground of detriment to adjoining landowners—Appeal allowed by Minister—Whether landowners persons aggrieved by Minister's action—Town and Country Planning Act 1959, s 31(1)(b). **Buxton v Minister of Housing and Local Government** [1960] 3 408, QBD.

Appropriation of land for planning purposes—

Local authority—

Power to appropriate land. *See* Local authority (Land—Power to appropriate land).

Building of special architectural or historic interest—

Building preservation order—

Date on which order made—Town and Country Planning Act 1959, s 31(3)(d). **Iveagh (Earl) v Minister of Housing and Local Government** [1963] 3 817, CA.

Neighbouring buildings—Whether architectural or historic interest of neighbouring buildings may be taken into account—Town and Country Planning Act 1947, s 29(1). **Iveagh (Earl) v Minister of Housing and Local Government** [1963] 3 817, CA.

Service of building preservation notice by post—Notice coming into force as soon as served—Service on company—Company owner of building—Notice sent to company's registered office by recorded delivery service—Company failing to put name on door of registered office—Postman unable to find office at which to deliver letter containing notice—Letter returned to planning authority—Demolition taking place after attempted delivery of notice on company—Whether notice validly served—Whether demolition in breach of preservation order—Interpretation Act 1889, s 26—Town and Country Planning Act 1962, s 214—Town and Country Planning Act 1968, s 48. **Maltglade Ltd v St Albans Rural District Council** [1972] 3 129, QBD.

Ecclesiastical building—

Building for the time being used for ecclesiastical purposes—Building which would be so used but for works of demolition etc—Use of building discontinued because of proposed demolition—Proposal to demolish whole building—Whether exemption limited to cases where use discontinued because of actual demolition—Whether exemption applicable where whole building being demolished and therefore use incapable of being resumed—Town and Country Planning Act 1971, s 56(1)(a). **Attorney-General (on the relation of Bedfordshire County Council) v Trustees of the Howard United Reformed Church, Bedford** [1975] 2 337, HL.

Building for the time being used for ecclesiastical purposes—For the time being—Relevant time—Time when proposed works of demolition or alteration carried out—Town and Country Planning Act 1971, ss 55(1), 56(1)(a). **Attorney-General (on the relation of Bedfordshire County Council) v Trustees of the Howard United Reformed Church, Bedford** [1975] 2 337, HL.

TOWN AND COUNTRY PLANNING (cont)

Building of special architectural or historic interest (cont)—

Ecclesiastical building (cont)—

Building owned by a church—Building having been used for ecclesiastical purposes only—Building having fallen into disuse—Building belonging to church other than Church of England—Whether an 'ecclesiastical building'—Town and Country Planning Act 1971, s 56(1)(a). **Attorney-General (on the relation of Bedfordshire County Council) v Trustees of the Howard United Reformed Church, Bedford** [1975] 2 337, HL.

Rectory—Whether rectory is within exemption for ecclesiastical buildings enacted in Town and Country Planning Act 1962, s 30(2)(a). **Phillips v Minister of Housing and Local Government** [1964] 2 824, CA.

Caravan site licence—

Caravan site—

Meaning—Refers to the land forming the site independent of the number of caravans on it—Caravan Sites and Control of Development Act 1960, s 1(4). **Minister of Housing and Local Government v Hartnell** [1965] 1 490, HL.

Condition—

Appeal—Licence granted subject to conditions—No appeal against conditions—Application by licensee to alter conditions—Refusal by local authority—Whether licence holder had right of appeal against refusal of application—Caravan Sites and Control of Development Act 1960, s 8(2). **Peters v Viewsley and West Drayton Urban District Council** [1963] 1 843, QBD.

Validity. *See* Caravan site licence—Validity of condition, *post*.

Existing site application—

Abandonment of application for site licence by subsequent application—Planning permission—Whether extending to whole area or part only—Deemed permission excluded—Caravan Sites and Control of Development Act 1960, s 17(1)(3). **James v Minister of Housing and Local Government** [1965] 3 602, CA.

Application for site licence treated as application for planning permission—Conditions imposed derogating from existing user rights—Whether conditions *ultra vires*—Whether existing user rights limited to placing on site the maximum number of caravans previously using it—Caravan Sites and Control of Development Act 1960, s 17(2). **Minister of Housing and Local Government v Hartnell** [1965] 1 490, HL.

Construction as being made in respect of existing sites—Planning permission—Whether extending to whole area or part only—Whether deemed permission excluded—Whether initial application abandoned by making subsequent application—Caravan Sites and Control of Development Act 1960, s 17(1)(3). **James v Secretary of State for Wales (formerly the Minister of Housing and Local Government)** [1966] 3 964, HL.

Exemption if application for licence made within two months beginning with commencement of Act—Commencement of Act at expiration of one month beginning with date on which it was passed—Computation of time—Caravan Sites and Control of Development Act 1960, ss 1(1), 14, 50(4). **Hare v Gocher** [1962] 2 763, QBD.

Extent of site—More than four years user by one caravan—Extent of site not specified—Enforcement notice covering whole area of land served out of time and quashed by Minister on appeal—Minister referred to two and a half acres as existing site—Site licence issued restricted to part of site on which one caravan stood and small area round—Whether applicant entitled to licence for two and a half acres—Whether Minister's decision raised *res judicata*—Caravan Sites and Control of Development Act 1960, ss 1(4), 17(1)(3). **R v Axbridge Rural District Council, ex parte Wormald** [1964] 1 571, CA.

Form—Letter 'I am making application for fifty...[caravans] as under the new Act'—Whether application for site licence—Caravan Sites and Control of Development Act 1960, ss 13, 17(1)(3). **Chelmsford Rural District Council v Powell** [1963] 1 150, QBD.

Use of land—Waste land being developed as caravan site on 9th March 1960, but no caravan on site on that date—Previous intermittent use of land for caravans—Caravan user discontinued each year but no change of user—Caravan user constituting development without planning permission—Time for serving enforcement notice expired—Whether land 'used' or 'in use' as caravan site on 9th March 1960—Caravan Sites and Control of Development Act 1960, ss 1(4), 13(a). **Biss v Smallburgh Rural District Council** [1964] 2 543, CA.

Validity of condition—

Condition as to number of caravans on site imposed by local planning authority—Whether local authority issuing site licence can impose condition beyond scope of planning condition—Caravan Sites and Control of Development Act 1960, ss 3(3), 29(4). **R v Kent Justices, ex parte Crittenden** [1963] 2 245, QBD.

Conditions not relating to physical use of land—Relating to control of rents, of contracts with caravan owners, of security of tenure and of normal terms of a tenancy—Uncertainty—Whether *ultra vires* and void—Caravan Sites and Control of Development Act 1960, s 5(1). **Chertsey Urban District Council v Mixnam's Properties Ltd** [1964] 2 627, HL.

No action taken by planning authority on application for site licence—Deemed planning permission unrestricted as to number of caravans—Subsequent issue by local authority of licence with condition limiting number of caravans—Whether planning considerations may be taken into account in determining whether site licence conditions were unduly burdensome—Caravan Sites and Control of Development Act 1960, ss 5(1), 7(1), 17(3). **Esdell Caravan Parks Ltd v Hemel Hempstead Rural District Council** [1965] 3 737, CA.

Classes of use. *See* Development—Use classes, *post*.

Coast protection. *See* Coast protection.

Compensation—

Compulsory purchase. *See* Compulsory purchase (Compensation).

TOWN AND COUNTRY PLANNING (cont)

Compensation (cont)—

Depreciation of land values—

Interest on compensation—Interest computed by reference to the period 1st July 1948 to 30th June 1955—Received in 1956-1959 by trustees in respect of sales of settled land during lives of two successive tenants for life and after death of second tenant for life—Whether interest apportionable over period by reference to which it was calculated and payable to personal representatives of tenants for life—Whether it should be treated as income accrued after death of second tenant for life—Town and Country Planning Act 1947, s 65(3)—Town and Country Planning Act 1953, s 2(1)—Town and Country Planning Act 1954, s 14(1)—Apportionment Act 1870, s 2. **Re Sneyd (decd)** [1961] 1 744, ChD.

Principal and interest received by trustees—Apportionment between capital and income—Rule in **Re Earl of Chesterfield's Trusts** applied—Town and Country Planning Act 1954, ss 1, 14(1). **Re Chance (decd)** [1962] 1 942, ChD.

Development restricted by statute—

Compensation for injury to estate or interest—Whether development proposals practicable at date of claim for compensation—Proposals abandoned or amended—Restriction of Ribbon Development Act 1935, s 9(1)(a). **Melksham Urban District Council v Wiltshire County Council** [1937] 4 142, KBD.

Ribbon development—Compensation for injury to estate or interest—Assessment of compensation—Decrease in market value—Expense of release from onerous agreement—Restriction of Ribbon Development Act 1935, s 9(1)(4). **Gibson v Norfolk County Council** [1941] 1 252, KBD.

Ribbon development—Injurious affection of land—Claim for compensation—Date at which compensation should be assessed—Date of claim—Restriction of Ribbon Development Act 1935, s 9. **Huckle v Lowestoft Corpn** [1942] 2 688, KBD.

Land scheduled as open space—

Basis of computation—Whether loss of building profits also recoverable—Acquisition of Land (Assessment of Compensation) Act 1919, s 2(2)—Town and Country Planning Act 1932, s 10(6). **Collins v Feltham Urban District Council** [1937] 4 189, KBD.

Land settled on trust for sale—

Compensation was capital but not proceeds of sale arising under the trust for sale—Law of Property Act 1925, s 28(1)—Town and Country Planning Act 1954, s 66(1)—Town and Country Planning (Mortgages, Rentcharges, etc) Regulations 1955 (S.I. 1955 No 38), reg 10. **Re Meux's Will Trusts** [1957] 2 630, ChD.

Modification of planning permission—

Permission for erection of agricultural cottage—Subsequent modification order—Condition restricting use to agricultural worker—Use limited by virtue of original permission—Town and Country Planning Act 1947, ss 18(3), 22(1). **Wilson v West Sussex County Council** [1963] 1 751, CA.

Notice—

Registration—Certificate of registrar of local land charges—Conclusiveness—Error—Omission of compensation notice—Whether certificate conclusive. **Ministry of Housing and Local Government v Sharp** [1970] 1 1009, CA.

Registration—Rules—Ultra vires—Whether power to make certificates issued by local land registrar conclusive as to existence of compensation notice—Town and Country Planning Act 1954, s 28(5)—Land Charges Act 1925, s 17(3)—Local Land Charges Rules 1934 (S.R. & O. 1934 No 285), r 15—Local Land Charges (Amendment) Rules 1954 (S.I. 1954 No 1677), r 2. **Ministry of Housing and Local Government v Sharp** [1970] 1 1009, CA.

Purchase notice, on. *See* **Compulsory purchase** (Compensation—Purchase notice).

Refusal of permission to develop—

Northern Ireland. *See* **Northern Ireland** (Town and country planning—Compensation—Refusal of permission to develop).

When right to compensation accrues—

Date when scheme comes into operation—Town and Country Planning Act 1932, s 18. **Bury v Epping Rural District Council and Essex County Council** [1940] 4 377, KBD.

Consent—

Advertisement—

Display without consent. *See* **Advertisement**—Display without express consent, *ante*.

Crown—

Whether bound by statute. *See* **Statute** (Crown—Whether bound by statute—Town and country planning legislation).

Designation of area as site for proposed new town. *See* **New town** (Order designating area as site for proposed new town).

Development—

Building—

Building operations in, on, over or under land—Large coal-hopper and conveyor, each on own wheels, installed in coal-yard—Town and Country Planning Act 1947, ss 12(2), 119(1). **Cheshire County Council v Woodward** [1962] 1 517 QBD.

Works on land—Construction of model village, railway and racecourse—Town and Country Planning Act 1947, ss 12(2), 75(9), 119(1). **Buckinghamshire County Council v Callingham** [1952] 1 1166, CA.

Building, engineering or other operations—

Removal of soil banked against blast walls of explosives stores and magazines—Demolition of walls—Alteration of building—Development requiring planning permission—Whether error of law by Minister—Town and Country Planning Act 1962, s 12(1). **Coleshill and District Investment Co Ltd v Minister of Housing and Local Government** [1969] 2 525, HL.

TOWN AND COUNTRY PLANNING (cont)

Development (cont)—

Extinction of use—

Open site used for market trading—Permission for erection of building over whole of site—Ground floor area beneath building left open—Permission expressly permitting use of area for trading on Sundays—Absence of express prohibition on weekday trading—Trading carried on on weekdays—Whether permission for development extinguishing right to use site for weekday trading. *Petticoat Lane Rentals Ltd v Secretary of State for the Environment* [1971] 2 793, QBD.

Interim development. *See* Interim development, *post*.

Material change of use—

Dwelling-house—Planning unit—Permitted use of premises—Use since before appointed day—Addition built on to premises—Agricultural smallholding—Permitted use of farmhouse for sale of homegrown and imported produce—Conservatory built on to farmhouse—Conservatory used thereafter for sale of produce—Enforcement notice requiring discontinuance of use of conservatory as retail shop—Whether conservatory to be regarded as separate planning unit—Whether use permitted for farmhouse permitted for conservatory. *Wood v Secretary of State for the Environment* [1973] 2 404, QBD.

Dwelling-house—Private residences subsequently used for multiple occupation for gain—Whether material change in use necessitating planning permission—Question of fact and degree—Use as separate dwelling-house—Whether Rent Act decisions applicable—Town and Country Planning Act 1947, s 12(2)(3)(a). *Birmingham Corp v Minister of Housing and Local Government and Habib Ullah* [1963] 3 668, QBD.

Dwelling-house—Two or more separate dwelling-houses—Building previously used as a single dwelling-house used for multiple occupation for gain—Whether material change of use requiring planning permission—Dwelling-houses must in truth be separate—Question of fact and degree—Town and Country Planning Act 1962, s 12(3). *Ealing Borough Council v Ryan* [1965] 1 137, QBD.

Petrol filling station with land attached used also for the display and sale of cars—Discontinuance of use for the display and sale of cars—Whether resumption of use constitutes material change of use—Town and Country Planning Act 1962, s 12(1). *Hartley v Minister of Housing and Local Government* [1969] 3 1658, CA.

Planning unit—Determination of what constitutes appropriate unit—Factors to be considered—Planning unit to be taken as whole unit of occupation unless smaller unit recognisable as site of activities amounting to a separate use physically and functionally. *Burdle v Secretary of State for the Environment* [1972] 3 240, QBD.

Question of fact and degree. *East Barnet Urban District Council v British Transport Commission* [1961] 3 887, QBD, *Bendles Motors Ltd v Bristol Corp* [1963] 1 578, QBD.

Recovery of scrap metal—Whether a material change of use from recovering 'metal' from scrap—Former use involved smelting of raw materials and production of foundry and basic pig iron—Proposed use involved receiving scrap for the processing and storage of ferrous and non-ferrous metals and ancillary uses connected therewith—Whether the proposed use was a special industrial use within Town and Country Planning (Use Classes) Order 1950 (SI 1950 No 1131), Sch, class 5, para(iv) or, having regard to art 3(3), was a class 4 use. *George Cohen 600 Group Ltd v Minister of Housing and Local Government* [1961] 2 682, QBD.

Revival of commercial use but for sale of caravans instead of portable garden buildings etc—Use for sale only in place of former manufacture and sale—Hut on land used, both before and after revival of commercial use, as office in which sales conducted—Whether revival of commercial use and different nature of article sold a material change in the use of the land—Hut a 'shop'—Use of hut and other land for sale of caravans not development—Town and Country Planning (Use Classes) Order 1950 (SI 1950 No 1131), arts 2(2), 3(1), Sch. *Marshall v Nottingham City Corp* [1960] 1 659, QBD.

Seasonal use—Normal use for two different purposes seasonally. *Webber v Minister of Housing and Local Government* [1967] 3 981, CA.

Permission—

Condition—Certiorari to quash. *See* Certiorari [Jurisdiction—Planning authority—Decision of authority—Permission for development—Grant of permission subject to conditions].

Generally. *See* Permission for development, *post*.

Permission for development subject to time limit and for particular purpose only—Registration as local land charge. *See* Land charge (Local land charge—Registration—Town planning).

Refusal of permission—Compensation—Northern Ireland. *See* Northern Ireland (Town and country planning—Compensation—Refusal of permission to develop).

Permitted development—

Development by mineral undertakers—Erection alteration or extension of building plant or machinery—Development on land in or adjacent to and belonging to a quarry or mine—Mine—Site on which mining operations are carried out—Mining operations—Winning and working of minerals—Adjacent—Belonging to—Meaning—Plaintiffs engaged in production of china clay—Crude slurry extracted from ground and partly treated on site—Slurry conveyed by pipeline to second site two miles distant—Process of drying clay completed on second site—Whether second site part of larger site on which 'mining operations are carried on'—Whether second site 'land in or adjacent to and belonging to a mine'—Town and Country Planning General Development Order 1963 (SI 1963 No 709), arts 2, 3, Sch 1, class XVIII, para 2. *English Clays Lovering Pochin & Co Ltd v Plymouth Corporation* [1974] 2 239, CA.

TOWN AND COUNTRY PLANNING (cont)

Development (cont)—

Resumption of normal use—

Disused golf course—Land used for agricultural purposes since 1946—Whether land could be regarded as still temporarily so used and whether use as a golf course could still be regarded as the normal use—Whether planning permission required—Town and Country Planning Act 1962, s 13(2). **Kingdon v Minister of Housing and Local Government** [1967] 3 614, QBD.

Unauthorised. *See* Enforcement of planning control—Unauthorised development, *post*.

Use classes—

Industrial building—Basement used in connection with business of horticulture carried on in shop opposite—In summer basement used for storing plants and bulbs and for sorting and grading bulbs for display in the shop and in winter for making and repairing boxes and trays which were used for displaying goods in the shop—In 1955 use of basement changed to that of printers' engineers' workshop which was user as a light industrial building—Whether material change in user—Whether on appointed day basement used as 'industrial building', 'shop' or 'repository'—Town and Country Planning (Use Classes) Order 1950 (S I 1950 No 1131), art 2(2), Sch, classes I, III, X. **Horwitz v Rowson** [1960] 2 881, QBD.

Industrial building—Light industrial building—Building previously used by local authority as a cooking centre for provision of school meals—Subsequent uses for purpose of making shirts—Whether use by local authority was for the purpose of a 'trade or business' within definition of 'industrial building'—Town and Country Planning (Use Classes) Order 1950 (S I 1950 No 1131)—Town and Country Planning (Use Classes) Order 1963 (S I 1963 No 708), arts 2(2), 3(1), Sch, class III. **Rael-Brook Ltd v Minister of Housing and Local Government** [1967] 1 262, QBD.

Students' hostel—Subsequent use as residential hotel—Whether change of use requiring planning permission—Town and Country Planning (Use Classes) Order 1963 (S I 1963 No 708), art 3(1), Sch, class XI. **Mornford Investments Ltd v Minister of Housing and Local Government** [1970] 2 253, QBD.

Unit for consideration in applying Use Classes Order—Whole of area used for particular purpose, including uses ancillary thereto, to be considered as single unit—Town and Country Planning (Use Classes) Order 1963 (S I 1963 No 708)—Town and Country Planning Act 1962, s 12(2)(f). **G Percy Trentham Ltd v Gloucestershire County Council** [1966] 1 701, CA.

Warehouse—Use as a wholesale warehouse or repository for any purpose—Meaning of wholesale warehouse—Meaning a question of fact—Open to Secretary of State to conclude that warehouse a building used primarily for storage—Cash and carry establishment used primarily for sale of goods not a warehouse—Town and Country Planning (Use Classes) Order 1972 (S I 1972 No 1385), Sch, Class X. **LTSS Print and Supply Services Ltd v London Borough of Hackney** [1976] 1 311, CA.

Validity of enforcement notice—

Development before 1st July 1948. *See* Enforcement notice—Validity—Development before 1st July 1948, *post*.

Development charge—

Determination—

Land subject to development viewed as a whole—Estate acquired for building purposes—Heavy expenditure to make part of land suitable—Expenditure exceeding value of whole land for building purposes—Whether development charge exigible—Town and Country Planning Act 1947, s 70(2). **London County Council v Central Land Board** [1958] 3 676, CA.

Development plan—

Schools—

Revision of development plan. *See* Education (Development plan—Revision—Alteration of development plan by introduction of scheme for converting existing secondary schools into comprehensive schools).

Development value—

Determination—

Appeal to Lands Tribunal—Evidence—Admissibility—Values agreed in cases of comparable land—Town and Country Planning Act 1947, s 60(1)—Lands Tribunal Act 1949, s 1(3)(d). **Stockbridge Mill Co Ltd v Central Land Board** [1954] 2 360, CA.

Land requisitioned at relevant date—Whether requisition an incident relevant to calculation of value—Town and Country Planning Act 1947, ss 61(5), 89(1). **Routh Trustees v Central Land Board** [1960] 2 436, CA.

Site of former public house—

Public house selling alcoholic and non-alcoholic drinks and light refreshments—Right to use as shop—Town and Country Planning Act 1947, s 61(2)—Town and Country Planning (Use Classes for Third Schedule Purposes) Order 1948 (S I 1948 No 955), Sch, para 2(2)—Town and Country Planning (Use Classes) Order 1948 (S I 1948 No 954), Sch, para 2(2). **Central Land Board v Saxone Shoe Co Ltd** [1955] 3 415, CA.

Unexpended balance of established development value—

Interest—Whether additional one-seventh to be regarded as interest—Town and Country Planning Act 1954, s 17(2). **Re Hasluck (decd)** [1957] 3 371, ChD.

Discontinuance order—

Compensation—

Factors to be taken into consideration—Offer by district valuer on behalf of compensating authority in course of negotiations—Offer originally made 'without prejudice' but 'without prejudice' lifted during hearing—Risks affecting purchaser's mind, in particular, his doubts as to the extent of existing user rights. **Blow v Norfolk County Council** [1966] 3 579, CA.

Enforcement notice—

Amendment—

Misrecital. **James v Minister of Housing and Local Government** [1965] 3 602, CA.

TOWN AND COUNTRY PLANNING (cont)

Enforcement notice (cont)—

Appeal against notice—

Caravan site—Amendment of grounds of appeal to Minister—Whether proper for new ground of appeal not stated in original notice of appeal to be considered by Minister—*Caravan Sites and Control of Development Act 1960, s 33(1)(a)(b)(g)(4)*. **Chelmsford Rural District Council v Powell** [1963] 1 150, QBD.

Caravan site—Increase of caravans from eight to twenty-seven—'Development'—Whether decision of justices that there had been no development was a decision of fact—*Town and Country Planning Act 1947, ss 12(2), 23(4)*. **Guildford Rural District Council v Penny** [1959] 2 111, CA.

Description of development—Sufficiency of description—Grounds on which court can quash notice—*Town and Country Planning Act 1947, s 23(4)*. **Keats v London County Council** [1954] 3 303, QBD.

Estoppel—Previous statement by officer of local planning authority that land had existing user right and that planning permission for this use was not needed—Purchase of land on faith of this statement—Notice requiring cesser of use—*Town and Country Planning Act 1947, s 23(1)*. **Southend-on-Sea Corp v Hodgson (Wickford) Ltd** [1961] 2 46, QBD.

Grounds—Ground not raised in notice of appeal—Planning permission for twenty-eight days under general development order—Whether ground open to appellant before Minister or on appeal to Supreme Court—*Caravan Sites and Control of Development Act 1960, s 33(1)(b)*—*Town and Country Planning General Development Order 1950 (S.I. 1950 No 728)*, art 3(1), Sch 1, Class IV, para 2. **Miller-Mead v Minister of Housing and Local Government** [1963] 1 459, CA.

Inquiry by inspector appointed by Minister—Whether Minister in deciding appeal bound by inspector's report—*Caravan Sites and Control of Development Act 1960, s 33(1)*. **Nelsovil Ltd v Minister of Housing and Local Government** [1962] 1 423, QBD.

Jurisdiction of justices to determine whether or not matters referred to in notice constituted development—*Town and Country Planning Act 1947, s 17(2)*, proviso, s 23(4). **Eastbourne Corp v Fortes Ice Cream Parlour (1955) Ltd** [1959] 2 102, CA.

Notice founded on breach of condition of grant of planning permission—Whether appellant could maintain that there had been no development and that no permission had been necessary—Development more than four years before notice—*Town and Country Planning Act 1947, s 23(1)(4)*. **Mounsdon v Weymouth and Melcombe Regis Corp** [1960] 1 538, QBD.

Notice of appeal to Minister—Notice in writing—Notice specifying grounds of appeal and facts on which based—Notice of appeal failing to comply with requirement to specify grounds and facts—Further notice complying with requirement served after expiry of time limited for appeal—Whether requirement to specify grounds and facts imperative—Whether first notice of appeal valid—*Town and Country Planning Act 1968, s 16(1)(2)*. **Howard v Secretary of State for the Environment** [1974] 1 644, CA.

Notice of no effect pending determination of appeal—Rejection of appeal by Secretary of State—Validity of rejection—Time limit for appeal against Secretary of State's decision expiring—Appellant prosecuted for failure to comply with enforcement notice—Appellant contending Secretary of State's rejection of appeal invalid and therefore effect of notice suspended—Whether appeal against enforcement notice finally determined—*Town and Country Planning Act 1971, s 88(2)(3)*. **Button v Jenkins** [1975] 3 585, QBD.

Person aggrieved—Whether local planning authority can be aggrieved—*Town and Country Planning Act 1947, s 23(4)(5)*. **Ealing Borough Council v Jones** [1959] 1 286, QBD. **R v Dorset Sessions Appeal Committee, ex parte Weymouth Corp** [1960] 2 410, QBD.

Renewal of previous use of land after 1st July 1948—Whether appeal should be allowed on the ground that there was no development of land—*Town and Country Planning Act 1947, s 23(4)*. **Fyson v Buckinghamshire County Council** [1958] 2 286, QBD.

Variation—No existing use as to all caravans alleged in enforcement notice—Existing use for storage caravans, but not for residential caravans—Power of Minister to vary terms by restricting notice to residential caravans—*Town and Country Planning Act 1947, s 23(1)(2)*—*Caravan Sites and Control of Development Act 1960, s 33(5)(6)*. **Miller-Mead v Minister of Housing and Local Government** [1963] 1 459, CA.

Appeal from Minister to High Court—

Breach of condition of planning permission—Reasons for imposition of condition not stated in written notice of permission—Whether condition null—Whether enforcement notice null—*Town and Country Planning General Development Order 1950 (S.I. 1950 No 728)*, art 5(9)(a)—*Town and Country Planning Act 1947, s 23(1)*. **Brayhead (Ascot) Ltd v Berkshire County Council** [1964] 1 149, QBD.

Burden of proof of grounds of appeal to Minister—Exercise of discretion by Minister not a ground of appeal in point of law—*Caravan Sites and Control of Development Act 1960, s 33(1)(a)(c)(g)*. **Nelsovil Ltd v Minister of Housing and Local Government** [1962] 1 423, QBD.

Caravan site—Intensification of use—Reference back to Minister to determine whether material change of use. **James v Secretary of State for Wales** [1966] 3 964, HL.

Evidence—Further evidence—To what extent fresh evidence may be adduced—Whether new rules of court permit re-hearing of case on primary facts—*Town and Country Planning Act 1962, s 180(1)(4)*—RSC (Rev) Ord 55, rr 1(4), 7(2). **Green v Minister of Housing and Local Government** [1966] 3 942, QBD.

Materiality of change of use—Question of fact and degree—Court will not interfere with Minister's decision, if no error in law, unless perverse in the sense of being unsupported by any evidence—Free standing egg vending machine at petrol filling station—Whether change of use of part of premises amounted to material change of use of whole premises—*Caravan Sites and Control of Development Act 1960, s 34(1)*. **Bendles Motors Ltd v Bristol Corp** [1963] 1 578, QBD.

TOWN AND COUNTRY PLANNING (cont)

Enforcement notice (cont)—

Appeal from Minister to High Court (cont)—

Procedure—Alternative procedures laid down by statute 'according as' rules of court may provide—Rules of court providing for appeal by one alternative only—Whether appellant has right of election to pursue other alternative procedure—Appeal only as prescribed by rules of court—Caravan Sites and Control of Development Act 1960, s 34—RSC Ord 59A, r 6. **Hoser v Ministry of Housing and Local Government** [1962] 3 945, ChD.

Contents of notice—

Specification of matters alleged to constitute breach of planning control—Necessity for making clear whether development without permission or failure to comply with condition subject to which permission granted—Unnecessary to use actual words of Act—Notice alleging that recipient 'contravening the provisions of' the Planning Acts—Notice referring to specific section of Act—Notice requiring recipient to restore land to condition before 'unauthorised development' took place—Whether notice making it sufficiently clear that development without grant of planning permission alleged to have taken place—Town and Country Planning Act 1968, s 15(2)(5). **Eldon Garages Ltd v Kingston-upon-Hull County Borough Council** [1974] 1 358, ChD.

Specification of steps required to remedy breach of planning control—Steps for restoring land to its condition before development took place—Breach of planning control—Discretion of planning authority to decide on steps required to remedy breach—Owner of site demolishing existing buildings and erecting new buildings without planning permission—Notice requiring demolition of new buildings only—Whether necessary for notice to require re-erection of previously existing buildings—Town and Country Planning Act 1968, s 15(5)(b). **Iddenden v Secretary of State for the Environment** [1972] 3 883, CA.

Contravention—

Information—Third offence—Fine imposed computed at £3 daily for a period extending more than six months before the date of the information—Town and Country Planning Act 1947, s 24(3)—Magistrates' Courts Act 1952, s 104. **R v Chertsey Justices, ex parte Franks** [1961] 1 825, QBD.

Correction of informality, defect or error—

Development of a type different from that alleged in the notice—Matter not raised at inquiry—Minister's discretion properly exercised by refusing to amend notice—Caravan Sites and Control of Development Act 1960, s 33(5). **Birmingham Corp'n v Minister of Housing and Local Government and Habib Ullah** [1963] 3 668, QBD.

Delay—

Use of machinery of Town and Country Planning Act for purpose of delay—Injunction—Town and Country Planning Act 1947, s 12. **Attorney-General (at the relation of Egham Urban District Council) v Smith** [1958] 2 557, QBD.

Effect—

Reversion to earlier lawful use—Purpose for which land may be used without planning permission—Purpose for which land could lawfully have been used if development enforced against had not been carried out—Established use—Use unlawful at its inception but no longer liable to enforcement action by reason of lapse of time—Whether permission required for a resumption of that use after service of enforcement notice—Town and Country Planning Act 1971, s 23(9). **LTSS Print and Supply Services Ltd v London Borough of Hackney** [1976] 1 311, CA.

Entry consequent on steps required by notice not being taken—

Power of local planning authority to enter land and take those steps—Whether authority entitled to enter for purpose of taking some only of the steps required by the notice—Town and Country Planning Act 1947, s 24(1)—Town and Country Planning Act 1962, s 48. **Arcam Demolition and Construction Co Ltd v Worcestershire County Council** [1964] 2 286, ChD.

Invalid notice—

Application by occupier for continuance of user—Appeal to Minister—Estoppel from denying invalidity—Town and Country Planning Act 1947, ss 16(1), 23(1). **Swallow and Pearson (a firm) v Middlesex County Council** [1953] 1 580, QBD.

Material change of use—

Intensity of use amounting to a change of use—Notice restricting use to intensity before specified date—Separate notices—Notices relating to different areas of same site—Effect of notices unduly restrictive—Authority only permitted to restrict intensity of use in relation to site as a whole. **De Mulder v Secretary of State for the Environment** [1974] 1 776, QBD.

No appeal against notice—

Subsequent summons for contravention—Matter not raised by appeal cannot be raised as defence to prosecution—Town and Country Planning Act 1947, ss 23(4), 24(1)(3). **Norris v Edmonton Corp'n** [1957] 2 801, QBD.

Subsequent summons for contravention—No power to question validity of notice—Town and Country Planning Act 1947, s 24(3). **Perrins v Perrins** [1951] 1 1075, KBD.

Notice founded on breach of condition of grant of planning permission—

Comprehensive condition applying to land other than that to which permission truly related—Land used by railway company for emergency coal stacking ground and by coal merchants as coal depot—User of land as transit depot for handling and storage of crated motor vehicles carried by rail—Whether 'development'—Development permitted by General Development Orders—Permission not needed—Town and Country Planning Act 1932, s 53—Town and Country Planning Act 1947, s 12(2)—Town and Country Planning General Development Order 1948 (S I 1948 No 958), art 3(1), Sch 1, class XVIII A—Town and Country Planning General Development Order 1950 (S I 1950 No 728), art 3(1), Sch 1, class XVIII A. **East Barnet Urban District Council v British Transport Commission** [1961] 3 878, QBD.

TOWN AND COUNTRY PLANNING (cont)

Enforcement notice (cont)—

Persistent breach of notice—

Convictions resulting in imprisonment in default of payment of fines—Injunction sought by Attorney-General to restrain breach—Jurisdiction—Town and Country Planning Act 1947, s 24(3). *Attorney-General (on the relation of Hornchurch Urban District Council) v Bastow* [1957] 1 497, QBD.

Reversion to earlier lawful use—

Purpose for which land may be used without planning permission—Purpose for which land could lawfully have been used if development enforced against had not been carried out—Established use—Use unlawful at its inception but no longer liable to enforcement action by reason of lapse of time—Whether permission required for that use after service of enforcement notice—Town and Country Planning Act 1971, s 23(9). *LTSS Print and Supply Services Ltd v London Borough of Hackney* [1975] 1 374, QBD.

Purpose for which land may be used without planning permission—Purpose for which land could lawfully have been used if development enforced against had not been carried out—Lawful use—Meaning—Previous use established without planning permission—Whether a 'lawful' use—Whether permission required to revert to that use—Town and Country Planning Act 1971, s 23(9). *W T Lamb & Sons Ltd v Secretary of State for the Environment* [1975] 2 1117, QBD.

Service—

Owner of land—Notice served on husband of freeholder—Land used for parking cars—Business of parking cars carried on by husband and wife jointly—Control of business in hands of husband—Husband described himself as owner when applying for planning permission—Whether service on husband sufficient—Whether enforcement notice enforceable—Town and Country Planning Act 1962, ss 45(3), 47(5), 221. *Courtney-Southan v Crawley Urban District Council* [1967] 2 246, QBD.

Period for service—Four-year period—Seasonal use—Two different uses annually—Whether material change of use in each year from one to the other—Whether land normally used for one purpose also used on occasions for another—Town and Country Planning Act 1962, ss 13(3), 45(2). *Webber v Minister of Housing and Local Government* [1967] 3 981, CA.

Period for service—Mining operations—Development—Four year period from carrying out of development—Initial working of area more than four years previously—Whether subsequent working of area within four year period new development or continuation of original development—Whether power to serve enforcement notice in relation to excavations being carried out within area of initial cut—Town and Country Planning Act 1962, ss 12(1), 45(2). *Thomas David (Porthcawl) Ltd v Penybont Rural District Council* [1972] 3 1092, CA.

Posting by prepaid registered post addressed to owner of caravan site—Certificate of delivery produced purporting to be signed by owner—Denial of receipt by owner not challenged in cross-examination—Whether service proved—Interpretation Act 1889, s 26—Town and Country Planning Act 1962, s 214(1)(c). *Moody v Godstone Rural District Council* [1966] 2 696, QBD.

Validity—

Application by originating summons for declaration that notice invalid—Town and Country Planning Act 1947, s 23—RSC Ord 54A, rr 1, 1A. *Rigden v Whitstable Urban District Council* [1958] 2 730, ChD.

Breach of condition of planning permission—Permission as to use for limited period—Planning permission for use of field as site for travelling circus for period in 1952 subject to discontinuance at end of period—Use without planning permission for periods in subsequent years—Whether use discontinued in 1952—Whether use in subsequent years breach of condition of earlier planning permission—Town and Country Planning Act 1947, s 23(4)(a). *Postill v East Riding County Council* [1956] 2 685, QBD.

Declaration—Whether proceedings barred by prior criminal proceedings. *See Declaration* (Jurisdiction)—Discretion—Issue open in criminal proceedings where plaintiff convicted—Caravan site—Owner of site previously convicted for non-compliance with enforcement notice).

Development prior to 1st July 1948—Town and Country Planning Act 1947, ss 23(1), 75(1). *Lincoln County Council (Parts of Lindsey) v Henshall* [1953] 1 1143, QBD.

Development prior to 1st July 1948—Town and Country Planning Act 1947, ss 23(1)(2)(4), 75(1). *East Riding County Council v Park Estates (Bridlington) Ltd* [1956] 2 669, HL.

Development prior to 1st July 1948—No appeal to Minister—Bar to challenging validity of notice in other proceedings—Town and Country Planning Act 1947, s 23(1)—Caravan Sites and Control of Development Act 1960, s 33(1)(c)(8). *Findlow v Lewis* [1962] 3 7, QBD.

Erroneous recital—Development alleged to have been carried out without planning permission—Permission for twenty-eight days under general order—Caravan Sites and Control of Development Act 1960, s 33(6)—Town and Country Planning General Development Order 1950 (S I 1950 No 728), art 3(1), Sch 1, class IV. *Miller-Mead v Minister of Housing and Local Government* [1963] 1 459, CA.

Mining operations—Planning unit in relation to development—Area specified in enforcement notice—Actual working having occurred only within two smaller areas within area specified—Validity of notice in relation to larger area—Power of planning authority to determine that larger area planning unit for purposes of development in question—Town and Country Planning Act 1962, s 45(1). *Thomas David (Porthcawl) Ltd v Penybont Rural District Council* [1972] 3 1092, CA.

Need to specify both date on which notice takes effect and period within which it must be complied with—Town and Country Planning Act 1947, s 23(2)(3). *Burgess v Jarvis* [1952] 1 592, CA. *Godstone Rural District Council v Brazil* [1953] 2 763, QBD.

Need to specify date on which notice takes effect—Notice invalid—No appeal to justices against notice—Right to question validity on subsequent summons for contravention—Town and Country Planning Act 1947, ss 23(3)(4), 24(1)(3). *Mead v Plumtree* [1952] 2 723, QBD.

TOWN AND COUNTRY PLANNING (cont)

Enforcement notice (cont)—

Validity (cont)—

Notice served at time when appeal to the Minister against condition in planning permission pending—Whether invalid—Town and Country Planning Act 1947, s 23. **Davis v Miller** [1956] 3 109, QBD.

Owner and occupier—Occupier—Licensee as occupier—Owner of caravan site—Caravan dweller residing in caravan as permanent home—Weekly payments by caravan dweller to site owner for use of pitch—Caravan dweller licensee of pitch—Copies of notice served on site owner and caravan dweller on different dates—Whether caravan dweller occupier of part of site—Town and Country Planning Act 1962, s 45(3)(a). **Stevens v London Borough of Bromley** [1972] 1 712, CA.

Owner and occupier—Occupier—Tenant of caravan site permitting companies in which he had interest to occupy parts of site for displaying and parking caravans and trailers—Site not sub-let to companies—One company making money payment to tenant—Enforcement notice served on one company as occupier of site—Town and Country Planning Act 1947, s 23(1). **Caravans & Automobiles Ltd v Southall Borough Council** [1963] 2 533, QBD.

Owner and occupier—Owner and occupier notices coming into effect at different dates—Notices served on owner and occupiers, being different persons, on different dates—Each notice to come into effect twenty-eight days after service—Appeal by occupiers to Minister—Consequently notices could not take effect until final determination of appeal, and would then take effect at the same time—Whether notices valid—Town and Country Planning Act 1962, ss 45(3)(a), 46(1)(3)(4). **Bambury v London Borough of Hounslow** [1966] 2 532, QBD.

Proceedings questioning validity of notice—Restriction on proceedings other than by statutory right of appeal—Proceedings begun before service of enforcement notice—Proceedings begun in anticipation of service of enforcement notice in order to challenge its validity when served—Originating summons seeking declaration that proposed use of premises within existing planning permission—Service of enforcement notice imminent—Summons taken out to challenge validity of notice when served—Whether proceedings begun before service of notice proceedings questioning validity of notice—Whether proceedings on originating summons should be stayed—Town and Country Planning Act 1971, s 243(1)(a). **Square Meals Frozen Foods Ltd v Dunstable Borough Council** [1974] 1 441, CA.

Sufficient indication of the objection and of what was required to be done—Caravan site—Service of notice on caravan dwellers as occupiers as well as on owners of site—Town and Country Planning Act 1947, s 23(1)—Caravan Sites and Control of Development Act 1960, s 17(3)(b). **Munnich v Godstone Rural District Council** [1966] 1 930, CA.

Wrong factual basis—Development alleged to have been carried out without planning permission—Permission for twenty-eight days under general order—Town and Country Planning Act 1947, s 23(1)—Town and Country Planning General Development Order 1950 (SI 1950 No 728), art 3(1), Sch 1, class IV, para 2. **Cater v Essex County Council** [1959] 2 213, QBD.

Wrong factual basis—Development alleged to have been carried out without planning permission—Permission originally granted for a limited period, since expired—No appeal to justices against notice—Right to question validity in High Court—Town and Country Planning Act 1947, s 23(2)(4). **Francis v Yiewsley and West Drayton Urban District Council** [1957] 3 529, CA.

Enforcement of planning control—

Land subject to resolution to prepare planning scheme—

Development carried out without permission before interim development order made—Town and Country Planning Act 1947, s 75(9). **Buckinghamshire County Council v Callingham** [1952] 1 1166, CA.

Unauthorised development—

Deemed to comply with planning control until 31st December 1949, and no longer, by determination under Building Restrictions (War-Time Contraventions) Act 1946, s 2(8)—Power to enforce control thereafter—Town and Country Planning Act 1947, ss 75(2)(a), 76(5). **D'Alessio v Enfield Urban District Council** [1951] 2 754, KBD.

Established use—

Certification—

Meaning of established use—Use begun before beginning of 1964 without planning permission and continued since end of 1963—Use of site begun in 1963 without planning permission—Permission granted in June 1964 for period of five years—Use continuing without permission after June 1969—Whether use can only be established where continuously without planning permission since end of 1963—Town and Country Planning Act 1968, s 17(1)(a). **Bolivian and General Tin Trust Ltd v Secretary of State for the Department of the Environment** [1972] 3 918, QBD.

Interim development—

Agreement between landowners and local authority—

Permission to develop land in accordance with specified method—Permission relating to period after planning scheme in force—Revocation of permission for interim development—Town and Country Planning Act 1932, ss 10(3), 34(1)—Town and Country Planning (Interim Development) Act 1943, s 4(1)(2). **Ransom & Luck Ltd v Surbiton Borough Council** [1949] 1 185, CA.

Conditional permission—

Limitation of time for commencement and completion of work—No reason given for imposing condition—Validity of condition—Town and Country Planning Act 1932, s 10(3). **London County Council v Marks & Spencer Ltd** [1953] 1 1095, HL.

Enforcement of interim development control—

Proposed prohibition of use of land—Appeal by occupier—Powers of court of summary jurisdiction—Town and Country Planning (Interim Development) Act 1943, s 5(2), Sch 1, para 3. **Swindon Corp v Pearce** [1948] 2 119, KBD.

TOWN AND COUNTRY PLANNING (cont)

Land held on charitable trusts—

Benefit to community—

Promotion of industry, commerce or art. **Crystal Palace Trustees v Minister of Town and Country Planning** [1950] 2 857, ChD.

Use of land for charitable purposes—

Land owned by company and used for school—Shares of company held by trustees under provisions of trust deed—School conducted on non-profit-making basis under deed—Payment by pupils of full fees—Town and Country Planning Act 1947, s 85(1). **The Abbey, Malvern Wells Ltd v Minister of Town and Country Planning** [1951] 2 154, ChD.

New town. *See* New town.

Permission for development—

Alternative site—

Materiality of the availability of alternative sites to the consideration of the granting of planning permission—Application for planning permission to use land as airport—Reference of application to minister—Local inquiry—Inspector's report recommending permission be withheld on ground that alternative sites not fully investigated—Minister's letter granting planning permission but not showing whether he had considered question of alternative sites—On whom burden of showing the existence of suitable alternative sites rested—Whether Minister under any duty to seek out alternative sites—Town and Country Planning Act 1947, s 14(1). **Rhodes v Minister of Housing and Local Government** [1963] 1 300, QBD.

Certificate that applicant owner of fee simple or entitled to tenancy of land—

Error in certificate—Whether planning authority loses jurisdiction to deal with application if factual error in certificate—Town and Country Planning Act 1959, s 37(1)(a). **R v Bradford-on-Avon Urban District Council, ex parte Boulton** [1964] 2 492, QBD.

Compensation for modification. *See* Compensation—Modification of planning permission, *ante*.

Condition—

Abrogation of existing use rights without compensation—Whether condition ultra vires—Town and Country Planning Act 1971, s 30(1). **Kingston-upon-Thames Royal London Borough Council v Secretary of State for the Environment** [1974] 1 193, QBD.

Conditions as to land not included in application for permission—Validity—Town and Country Planning Act 1947, ss 14(2), 17(1). **Pyx Granite Co Ltd v Ministry of Housing and Local Government** [1959] 3 1, HL.

Permission to build cottages on condition that occupants employed in agriculture etc—Validity—Town and Country Planning Act 1947, ss 14(1), 36. **Fawcett Properties Ltd v Buckingham County Council** [1960] 3 503, HL.

Reasonableness—Ultra vires—Uncertainty—Severability—Permission granted subject to condition requiring developer to build road on his land and in effect to dedicate it as public highway without compensation—Validity of condition—Whether permission valid with condition struck out—Whether parts of condition severable—Town and Country Planning Act 1947, s 14(1)(2). **Hall & Co Ltd v Shoreham-by-Sea Urban District Council** [1964] 1 1, CA.

Reasonableness—Ultra vires—Severability—Permission granted to private developer—Permission subject to conditions—Conditions requiring developer to make dwellings suitable for local authority tenants—Conditions requiring dwellings to be occupied by local authority tenants—Whether conditions ultra vires—Whether conditions severable. **R v London Borough of Hillingdon, ex parte Royco Homes Ltd** [1974] 2 643, QBD.

Reasonableness—Ultra vires—Outline planning permission to lapse if detailed plans not submitted and approved within three years—Whether unreasonable or ultra vires—Whether severable—Town and Country Planning Act 1947, s 14(1). **Kent County Council v Kingsway Investments (Kent) Ltd** [1970] 1 70, HL.

Consent agreement under statute—

New Act coming into force—Whether consent agreement avoiding need to obtain planning permission—Town and Country Planning Act 1932, s 34(1)—Town and Country Planning Act 1947, s 12(1). **Thackray v Central Land Board** [1952] 1 1374, ChD.

Construction—

Construction of permission with incorporated plan—Permission relating to land shown uncoloured on plan—Plan proposing development only of land shown coloured—Whether discrepancy between permission and plan reconcilable—Whether meaning of permission ascertainable. **Slough Estates Ltd v Slough Borough Council (No 2)** [1970] 2 216, HL.

Incorporation of application etc by words of planning permission—Permission for erection of 'agricultural cottage'—Functional description—Purposes or design specified within s 18(3) and use limited accordingly—Town and Country Planning Act 1947, s 18(3). **Wilson v West Sussex County Council** [1963] 1 751, CA.

Determination whether permission needed—

Application for determination—Implicit in application for planning permission—Letter of local planning authority that proposed erection of plant could be regarded as permitted development sufficient determination—Bye-law consent granted subsequently for larger plant—Warning against acting on bye-law consent before planning approval deleted from consent form—Whether deletion on bye-law consent amounted to determination that planning permission not required—Town and Country Planning Act 1962, s 43(1). **Wells v Minister of Housing and Local Government** [1967] 2 1041, CA.

Application refused by local planning authority and refusal confirmed by Minister—Further application approved and adopted by local planning committee—Whether Minister had jurisdiction to decide whether planning permission had been validly granted—Town and Country Planning Act 1947, s 17(1). **Edgwarebury Park Investments Ltd v Minister of Housing and Local Government** [1963] 1 124, QBD.

Interim development. *See* Interim development—Conditional permission, *ante*.

TOWN AND COUNTRY PLANNING (cont)

Permission for development (cont)—

Land unoccupied on appointed day—

Last use of land in contravention of local planning scheme—Whether permission required—Town and Country Planning Act 1947, s 12(5), proviso (i). **Glamorgan County Council v Carter** [1962] 3 866, QBD.

Material consideration—

Cost of development—Whether cost of developing site a material consideration to be taken into account by planning authority when considering application for permission—Town and Country Planning Act 1971, s 29(1). **J Murphy and Sons Ltd v Secretary of State for the Environment** [1973] 2 26, QBD.

Development likely to interfere with Jodrell Bank radio telescope—Such interference a material consideration to which the Minister, on appeal against the refusal of permission, was entitled to have regard—Material considerations not limited to matters of amenity but covering any consideration, in regard to public or private interests, which related to the use and development of land—Town and Country Planning Act 1962, s 17(1). **Stringer v Minister of Housing and Local Government** [1971] 1 65, QBD.

Multiple permissions in respect of same piece of land—

Permissions inconsistent with each other—Planning authority bound to consider application without regard to other permissions granted but not implemented—Implementation of permission rendering impossible implementation of earlier inconsistent permission. **Pilkington v Secretary of State for the Environment** [1974] 1 283, QBD.

Necessity for permission—

Agreement between quarry-owners and local authority as to quarrying areas scheduled to Act of Parliament—Whether agreed quarrying was development 'authorised' by any local or private Act—Town and Country Planning General Development Order 1950 (S I 1950 No 728), art 3(1), Sch 1, class XII—Malvern Hills Act 1924, s 54, Sch 4. **Pyx Granite Co Ltd v Ministry of Housing and Local Government** [1959] 3 1, HL.

Notification—

Error—Effect—Planning authority resolving to refuse permission—Applicant notified by planning officer in prescribed form that permission granted—Whether notice amounting to permission—Whether planning authority estopped from denying validity of notice. **Norfolk County Council v Secretary of State for the Environment** [1973] 3 673, QBD.

Notice of grant of limited permission not given within time laid down in General Development Order—Whether permission void or voidable—Town and Country Planning Act 1947, s 23(3)—Town and Country Planning General Development Order 1950 (S I 1950 No 728), art 5(8). **James v Minister of Housing and Local Government** [1965] 3 602, CA.

Notice of refusal not given within time laid down in General Development Order—Mandatory requirement—Notice void—Enforcement notice given before application for development permission also invalidated—Town and Country Planning Act 1947, s 23(3)—Town and Country Planning General Development Order 1950 (S I 1950 No 728), art 5(8). **Edwick v Sunbury-on-Thames Urban District Council** [1961] 3 10, QBD.

Person hoping to acquire interest in the land—Obligation of authority to notify owner of application—Town and Country Planning Act 1947, s 14(1). **Hanily v Minister of Local Government and Planning** [1952] 1 1293, QBD.

Reasons—Factors taken into account should be identified—Town and Country Planning (Inquiries Procedure) Rules 1965 (S I 1965 No 473), r 13(1). **Westminster Bank Ltd v Beverley Borough Council** [1968] 2 1199, CA.

Outline permission—

Approval of details—Whether an application for planning approval of details in outline permission is an application for planning permission—Town and Country Planning General Development Order 1950 (S I 1950 No 728), art 5. **R v Bradford-on-Avon Urban District Council, ex parte Boulton** [1964] 2 492, QBD.

Design and siting reserved for subsequent approval—Subsequent application for approval on reserved matters refused on ground that development contrary to planning authority's proposals for the area—Whether outline permission a sufficient valid permission for development—Town and Country Planning General Development Order and Development Charge Applications Regulations 1950 (S I 1950 No 728), art 5(2). **Hamilton v West Sussex County Council** [1958] 2 174, QBD.

Permissions before and after appointed day—

Permission granted in 1945 under previous planning control for seven years determinable by notice thereafter—Second permission in 1947 for seven years only—Extension of permission in 1951 under new planning control conditional on discontinuance at end of March 1960—User of premises begun in war period deemed to comply with previous planning control—No notice of discontinuance under permission of 1945—Permission of 1945 not registered as local land charge—Whether local planning authority entitled to serve enforcement notice after March 1960—Building Restrictions (War-Time Contraventions) Act 1946, s 4(1)—Town and Country Planning Act 1947, s 76(2)(3). **Rose v Leeds Corp** [1964] 3 618, CA.

Permission to use land for any purpose on not more than 28 days in total in any calendar year—

Information charging unlawful use on 12th January 1953, and on two dates in December 1952—Town and Country Planning General Development Order 1950 (S I 1950 No 728), art 3(1), Sch I, Part I, class IV, para 2. **Godstone Rural District Council v Brazil** [1953] 2 763, QBD.

Refusal—

Agricultural land—Refusal to permit construction of sports stadium—Overriding need of agriculture—Town and Country Planning Act 1932, s 10(5). **R v East Kesteven Rural District Council, ex parte Sleaford & District White City Sports Stadium Co** [1947] 1 310, KBD.

TOWN AND COUNTRY PLANNING (cont)

Permission for development (cont)—

Refusal (cont)—

Alternative to exercising statutory power under Highways Act to prescribe improvement line with a view to road widening—Exercise of power under s 72 would carry right to compensation, but refusal of development permission might not or might carry less compensation—Dismissal by Minister of appeal from refusal of permission—Whether Minister's decision valid—Highways Act 1959, s 72—**Town and Country Planning Act 1962**, ss 17, 23. **Westminster Bank Ltd v Minister of Housing and Local Government** [1970] 1 734, HL.

Appeal. *See* Appeal to Minister against refusal of permission for development, *ante*.

Compensation—Reasons relating to radio telescope at Jodrell Bank—No right to compensation for refusal on those grounds—Planning authority entitled to refuse permission on such grounds despite absence of compensation. **Stringer v Minister of Housing and Local Government** [1971] 1 65, QBD.

Revocation—

Compensation—Expenditure in carrying out work which is rendered abortive by the order—Plans prepared but no building operations carried out—Plans prepared before permission obtained for building—Town and Country Planning (Interim Development) Act 1943, s 7(2)(3). **Holmes v Bradfield Rural District Council** [1949] 1 381, KBD.

Direction that development of permitted class inexpedient—Whether direction valid in relation to development already carried out—Town and Country Planning General Development Order and Development Charge Applications Regulations 1950 (S.I. 1950 No 728), art 4(1). **Cole v Somerset County Council** [1956] 3 531, QBD.

Sale of land—

Condition. *See* Sale of land (Condition—Planning permission to be obtained).

Ultra vires—

Declaration—Applicant must show injuria as well as damnum—No legal right of applicant infringed by development on adjoining land to which planning permission related—No locus standi to maintain action against planning authority for declaration that permission ultra vires. **Gregory v London Borough of Camden** [1966] 2 196, QBD.

Variation of detailed planning permission—

Variation allowed by planning authority's officer as being immaterial and not requiring further permission—Practice of planning authorities to allow their officers to decide on materiality of minor modifications to an approved plan—Matter within officer's ostensible authority and his decision, acted on by developers, binding on planning authority—Delegation of function of determining applications—Variation in site of house—Town and Country Planning Act 1968, s 64. **Lever (Finance) Ltd v Westminster Corp'n** [1970] 3 496, CA.

Planning unit—

Determination of unit. *See* Development—Material change of use—Planning unit, *ante*.

Purchase notice—

Compensation. *See* Compulsory purchase (Compensation—Purchase notice).

Confirmation—

Quashing of confirmation—Speaking decision for confirmation stating a sole ground—Invalidity of that ground—Town and Country Planning Act 1947, s 19(1)(a). **R v Minister of Housing and Local Government, ex parte Chichester Rural District Council** [1960] 2 407, QBD.

Refusal of confirmation—Permission for other development in lieu of confirmation—Development contemplated by decision not development within Sch 3 to the Town and Country Planning Act 1947—Whether decision ultra vires—Town and Country Planning Act 1947, ss 19(2), 19(2A)(added by Town and Country Planning Act 1954, s 70). **R v Minister of Housing and Local Government, ex parte Rank Organisation Ltd** [1958] 3 322, QBD.

Refusal of confirmation—Power of Secretary of State to refuse confirmation—Land incapable of reasonably beneficial use—Land having a restricted use by virtue of previous planning permission—Power to refuse confirmation where appearing to Secretary of State that land ought, in accordance with previous planning permission, to remain undeveloped—Part only of land to which purchase notice relating having been subject of previous planning permission—Secretary of State having power to refuse confirmation only where whole of land to which purchase notice relating subject of previous planning permission—Town and Country Planning Act 1962, ss 129(1), 132(1)—Town and Country Planning Act 1968, s 32. **Plymouth City Corp'n v Secretary of State for the Environment** [1972] 3 225, QBD.

Service of notice on borough council—Minister's notice of proposed action to confirm purchase notice without modification—No hearing before person appointed by Minister—Informal meeting between Minister, planning authority, and borough council—Substitution of planning authority for borough council as acquiring authority in purported confirmation of purchase notice—Town and Country Planning Act 1947, s 19(3)(5). **Ealing Borough Council v Minister of Housing and Local Government** [1952] 2 639, ChD.

Jurisdiction of Lands Tribunal. *See* Lands Tribunal (Jurisdiction—Consent—Statutory tribunal). 196310326

Owner of land—

Person entitled to receive rackrent—Grant by freeholders of long lease—Confirmation of purchase notice—Town and Country Planning Act 1947, ss 19(1)(2), 119(1). **Corp'n of London v Cusack-Smith** [1955] 1 302, HL.

Qualifying interest—

Hereditament exempt from rating and specified as exempt in valuation list—Whether interest in such a hereditament a qualifying interest—Whether annual value did not exceed £250 for the purposes of Town and Country Planning Act 1959, s 39(4)(a). **Essex County Council v Essex Incorporated Congregational Church Union** [1963] 1 326, HL.

TOWN AND COUNTRY PLANNING (cont)

Purchase notice (cont)—

Validity—

Allocation—Land 'allocated' by a development plan—Allocation for purposes of functions of a local authority—Plan showing redevelopment area in residential area—Proposal to clear and redevelop—No specific exercise of power or duty by authority—Capability of redevelopment in part by private enterprise—Town and Country Planning Act 1959, ss 39(1)(2), 41(2), 57(1). **Bolton Corp v Owen** [1962] 1 101, CA.

Ribbon development—

Compensation. *See* Compensation—Development restricted by statute—Ribbon development, *ante*.

Statutory undertakers—

Operational land—

Land vested in statutory undertakers but not yet used by them for the purpose of their undertaking—Land not contiguous to land used for the purpose of a statutory undertaking—Town and Country Planning Act 1947, s 119(1). **R v Minister of Fuel and Power, ex parte Warwickshire County Council** [1957] 2 731, QBD.

Town planning scheme—

Industrial building—

Factory—Premises used for testing concrete—Town and Country Planning Act 1932, s 13(1) (c)—Factories Act 1937, s 151(1). **Hendon Corp v Stanger** [1948] 1 377, CA.

Resolution to prepare scheme—

Scheme to include prohibition of use of land for certain purposes without consent of local authority—Validity—Town and Country Planning Act 1932, ss 1, 11. **Taylor v Brighton Corp** [1947] 1 864, CA.

Trees—

Preservation order—

Prohibition of wilful destruction of trees—Destruction—Meaning—Damage to root system of tree—Damage reducing life expectancy of tree and rendering it less stable—Whether tree destroyed—Town and Country Planning Act 1962, s 29(1)(a). **Barnet London Borough Council v Eastern Electricity Board** [1973] 2 319, QBD.

Unfinished buildings—

Works for the erection of a building—

Completion of clearance of site—Erection of new building not begun—Separate contracts for clearance and building—Town and Country Planning Act 1947, s 78(1). **London County Council v Marks & Spencer Ltd** [1953] 1 1095, HL.

War damage—

Compulsory purchase order—

Direction by Minister that application for order under 1944 Act be continued after 1947 Act came into force—Direction given before 1947 Act came into force—Validity—Interpretation Act 1889, s 37—Town and Country Planning Act 1944, s 1(1)—Town and Country Planning Act 1947, s 113(2)(5), Sch X, para 16. **R v Minister of Town and Country Planning, ex parte Montague Burton Ltd** [1950] 2 282, CA.

Redevelopment of land—

Compulsory purchase—Order by Minister—Powers of Minister—Town and Country Planning Act 1944, s 1(1). **Phoenix Assurance Co Ltd v Minister of Town and Country Planning** [1947] 1 454, KBD, **Robinson v Minister of Town and Country Planning** [1947] 1 851, CA.

Works for the erection of a building—

Demolition of existing buildings and clearance of site—

Erection of new building not begun—Separate contracts for clearance and building—Town and Country Planning Act 1947, s 78(1). **London County Council v Marks & Spencer Ltd** [1953] 1 1095, HL.

TOWN OR VILLAGE GREENRegistration. *See* Commons (Registration—Town or village green).**TRACING**

Sale of goods—

Proceeds of sub-sales—

Vendor retaining property in goods. *See* Sale of goods (Passing of property—Vendor retaining property in goods—Duty of purchaser to account for proceeds of sub-sales).

TRACK

Licensed track—

Charges to bookmakers. *See* Gaming (Betting—Licensed track—Charges to bookmakers).

TRADE

Advertising—

Use of loudspeaker. *See* Advertisement (Trade or business—Use of loudspeaker for advertising purposes).

Capital gains tax—

Short term gain—

Sale of goodwill of hairdressing business—Earned income relief—Whether income 'immediately derived' from carrying on of trade. *See* Capital gains tax (Short term gain—Earned income relief—Income immediately derived by individual carrying on of his trade—Wife's earned income allowance—Sale of goodwill of wife's hairdressing business).

Change—

Income tax. *See* Income tax (Deduction in computing profits—Loss connected with or arising out of trade).

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Discharge into river. *See* **Water and watercourses** (Pollution of river—Discharge of trade effluent).

Expenses—

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False trade description—

Application of false trade description in course of trade. *See* **Trade Description** (False or misleading indication as to price—Scope of offence).

False trade description. *See* **Trade description**.

Income tax—

Deduction in computing profits. *See* **Income tax** (Deduction in computing profits).

Generally. *See* **Income tax** (Trade).

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Nuisance—

Damages. *See* **Nuisance** (Damages—Interference with trade).

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Australia. *See* **Australia** (Freedom of inter-state trade).

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Representative of foreign country on—

Whether entitled to diplomatic immunity. *See* **Constitutional law** (Diplomatic privilege—Immunity from legal process—Acceptance of diplomat by receiving country—Member of permanent mission).

Practice of trade—

Defence to action for negligence. *See* **Negligence** (Defence—Practice of trade).

Price maintenance—

Resale price maintenance. *See* **Restrictive trade practices** (Resale price maintenance).

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Income tax. *See* **Income tax** (Profits—Trading receipts).

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Auction—

Knock-out agreement. *See* **Auction** (Knock-out agreement).

Expulsion from trade union—

Unfettered power to expel in union rules. *See* **Trade union** (Rules—Validity—Rules giving unfettered power of expulsion from membership).

Restraint of trade by agreement. *See* **Restraint of trade by agreement**.

Restrictive practices—

European Economic Community. *See* **European Economic Community** (Restrictive trade practices).

See **Restrictive trade practices**. *See* **Restrictive trade practices**.

Street trading. *See* **Street trading**.Trade description. *See* **Trade description**.Trade mark. *See* **Trade mark**.Trade union. *See* **Trade union**.**TRADE DESCRIPTION**

Accommodation—

Hotel. *See* False or misleading statement as to services etc—Statement made recklessly—Hotel accommodation, *post*.

Airline—

Overbooking of seats. *See* False or misleading statement as to services etc—Promise in regard to future—Statement of fact coupled with promise—Booking and reservation of seat, *post*.

Car—

New car. *See* False trade description—False description—New car, *post*.

Civil action. *See* False trade description—Civil right of action, *post*.

Defence to proceedings—

Act or default of another person—

Company—Exercise of supervisory function by employee of company—Failure by employee to exercise supervisory function properly—Whether employee to be identified with company—Whether employee 'another person'—Trade Descriptions Act 1968, s 24(1). **Tesco Supermarkets Ltd v Natrass** [1971] 2 127, HL.

Shop manager's failure to carry out accused's instructions—Whether manager 'another person' within Trade Descriptions Act 1968, s 24(1). **Beckett v Kingston Bros (Butchers) Ltd** [1970] 1 715, QBD.

Mistake—

Mistake by person other than person charged—Mistake by servant or agent—Trade Descriptions Act 1968, s 24(1). **Birkenhead and District Co-operative Society Ltd v Roberts** [1970] 3 391, QBD.

Reasonable precautions and due diligence to avoid commission of offence—

Company—Large-scale business—Exercise of supervisory functions by employee—Exercise of due diligence by company a question of fact—Failure by employee to exercise supervisory function properly—Liability of company—Trade Descriptions Act 1968, s 24(1). **Tesco Supermarkets Ltd v Natrass** [1971] 2 127, HL.

TRADE DESCRIPTION (cont)

Defence to proceedings (cont)—

Reasonable precautions and due diligence to avoid commission of offence (cont)—

Nature of defence—Short measure given by servant—Liability of master—No finding of inadvertence or mistake—Merchandise Marks Act 1887, s 2(2)(a)(b)(c). **Slatcher v George Mence Smith Ltd** [1951] 2 388, KBD.

Sale of car by motor dealer—False mileage indicated on odometer—Dealer ignorant that odometer had been tampered with—Dealer not having received log book at time of sale—Car examined by servant of dealer and independent expert—Condition of car consistent with mileage shown on odometer—Whether dealer having taken all reasonable precautions and exercised due diligence—Whether dealer bound to acquire log book before sale in order to check mileage with previous owner—Trade Descriptions Act 1968, ss 1(1)(b), 24(1)(3). **Naish v Gore** [1971] 3 737, QBD.

Disclaimer—

False trade description—

Application in course of trade or business. *See* False trade description—Application in course of trade or business—Disclaimer, *post*.

Disclaimer. *See* False trade description—Application in course of trade or business—Disclaimer of false trade description, *post*.

Document—

Interpretation—

False trade description or statement—Statement in document alleged to be false—Meaning of statement—Whether interpretation of document matter for judge or jury. **R v Sunair Holidays Ltd** [1973] 2 1233, CA.

False or misleading indication as to price—

Counter-indication—

Self-service store—Goods displayed on stalls with misleading indication as to price—Stalls situated some distance away from cash till—Notice on cash till serving to give correct indication as to price—Whether defence that customer's false impression as to price subsequently corrected by notice on cash till—Trade Descriptions Act 1968, s 11(2). **Doble v David Greig Ltd** [1972] 2 195, QBD.

Indication likely to be taken as an indication that goods being offered at price less than that at which in fact being offered—

Statements as to price susceptible of two possible meanings—One of meanings accurate—Whether statements 'likely to be taken' as indicating that goods offered at lower price—Trade Descriptions Act 1968, s 11(2). **Doble v David Greig Ltd** [1972] 2 195, QBD.

Indication of previous offer at higher price—

Offer at higher price for continuous period of 28 days within preceding six months—Necessity for prosecution to establish that no such offer made during full six month period—Trade Descriptions Act 1968, s 11(1), (3). **House of Holland Ltd v London Borough of Brent** [1971] 2 296, QBD.

Scope of offence—

Offence committed only in relation to trade or business—No application to transactions with members in members clubs—Trade Descriptions Act 1968, s 11. **John v Matthews** [1970] 2 643, QBD.

False or misleading statement as to services etc—

False statement as to provision in the course of trade or business of services—

Qualification to provide services—Statement made by person that he is properly qualified to provide services—Whether 'statement ... as to ... provision ... of services'—Trade Descriptions Act 1968, s 14(1)(i). **R v Breeze** [1973] 2 1141, CA.

False statement as to provision in course of trade or business of services—

Statement that services available under guarantee—Trade Descriptions Act 1968, s 14(1)(i). **Breed v Cluett** [1970] 2 662, QBD.

Making a statement—

Statement made after contract and after payment—Whether a 'statement' within Trade Descriptions Act 1968, s 14(1). **Breed v Cluett** [1970] 2 662, QBD.

When offence committed—Statement contained in brochure—Copies of brochure circulated to public—Separate complaints made independently by different readers—Separate prosecutions—Conviction on first prosecution—Whether single offence committed when brochure printed and published or separate offences committed each time contents of brochure communicated to a reader—Whether accused entitled to plead *autrefois convict* on second prosecution—Trade Descriptions Act 1968, s 14(1). **R v Thomson Holidays Ltd** [1974] 1 823, CA.

Promise in regard to future—

Building of garage—Statements made before building started—Statement as to the date on which garage would be completed—Statement incapable of being true or false at time when made—Trade Descriptions Act 1968, s 14(1). **Beckett v Cohen** [1973] 1 120, QBD.

Prediction as to future facts—Statements incapable of being true or false at time made—Holiday brochure—Brochure issued in winter for following summer season—Brochure stating hotel had swimming pool—Swimming pool being built for summer season—Swimming pool not in fact completed by summer—Need to prove that statement meant hotel had swimming pool at time brochure issued—Trade Descriptions Act 1968, s 14(1). **R v Sunair Holidays Ltd** [1973] 2 1233, CA.

Statement of fact distinguished from promise—Statement of existing intention—Booking and reservation of seat—Airline—Customer booking seat on particular flight—Airline writing letter confirming reservation for flight—Policy of airline to overbook flights—Seats available at time of customer's booking—Airline subsequently overbooking flight—Customer in consequence unable to travel on flight—Customer travelling on following day—Whether letter from airline containing statement of fact as opposed to promise of future conduct—Trade Descriptions Act 1968, s 14(1). **British Airways Board v Taylor** [1976] 1 65, HL.

TRADE DESCRIPTION (cont)

False or misleading statement as to services etc (cont)—

Statement in the course of any trade or business—

Trade or business—Profession—Statement made by professional man in course of providing professional services—Whether 'trade or business' including profession—Trade Descriptions Act 1968, s 14(1). **R v Breeze** [1973] 2 1141, CA.

Statement made recklessly—

Hotel accommodation—Description in travel agent's brochure—Rooms with terraces—

Contract in existence by travel agents with hotel to keep such rooms for their clients—

Acceptance of offer contained in brochure by holidaymakers—Holidaymakers given rooms without terrace—Alleged default of travel agents in checking accommodation—Any such default of travel agents subsequent to booking—Whether offence committed—Trade

Descriptions Act 1968, s 14(1)(b)(2). **Sunair Holidays Ltd v Dodd** [1970] 2 410, QBD.

Statement made regardless of whether it is true or false—Statement in trade advertisement—

Advertiser failing to appreciate that advertisement reasonably capable of being understood in sense different to that intended—Whether statement made regardless of truth or falsity—

Trade Descriptions Act 1968, s 14(1)(2). **MFI Warehouses Ltd v Natrass** [1973] 1 762, QBD.

False trade description—

Application in course of trade or business—

Disclaimer of false trade description—Circumstances in which inference that false trade

description applied will be negated—Bold, precise and compelling evidence of disclaimer

required—Sale by dealers of used car with false mileometer reading—Dealers supplying

printed document to customer stating, inter alia, that they were not answerable for mileage

shown on mileometer—Whether sufficient to negative inference that false trade description

applied to goods—Trade Descriptions Act 1968, s 1(1)(b). **R v Hammertons Cars Ltd**

[1976] 3 758, CA.

Disclaimer of false trade description—What constitutes effective disclaimer—Trade

Descriptions Act 1968, s 1. **Norman v Bennett** [1974] 3 331, QBD.

Sale of car by car-hire firm—Car sold in accordance with usual practice when hire cars over

certain age—Whether sale 'in course of trade or business' of car-hire firm—Trade

Descriptions Act 1968, s 1(1)(b). **London Borough of Havering v Stevenson** [1970] 3 609,

QBD.

Application to goods—

Application of false trade description to goods by buyer—Application in course of trade or

business carried on by buyer—Whether an offence—Trade Descriptions Act 1968, s 1(1)(a).

Fletcher v Budgen [1974] 2 1243, QBD.

Package of goods—Item supplied with goods—Gas cooker—Brochure stating that battery

torch supplied with cooker—Battery torch not in fact supplied with cooker—Whether

'goods' including torch or confined to cooker—Whether description applied to goods—

Trade Descriptions Act 1968, s 1(1)(a). **British Gas Corporation v Lubbock** [1974] 1 188,

QBD.

Civil right of action—

Rival trader—Whether action for damages lies for breach of statutory duty under Merchandise

Marks Acts 1887 to 1953—Merchandise Marks Act 1887, s 2(2)—Merchandise Marks Act

1953, s 4. **J Bollinger v Costa Brava Wine Co Ltd** [1959] 3 800, ChD.

False description—

New car—Damage and repair—Car damaged after leaving factory on way to dealers for

supply to customer—Car repaired by someone other than manufacturers—Circumstances

in which car may still be properly described as a 'new' car—Trade Descriptions Act 1968,

s 1(1). **R v Ford Motor Co Ltd** [1974] 3 489, CA.

Falsity of description—

Application of trade description to contents rather than container—Milk bottle embossed with

other than retailer's name—Foil cap on bottle embossed with retailer's name—Trade

Descriptions Act 1968, ss 1(1)(b), 3(1). **Donnelly v Rowlands** [1971] 1 9, QBD.

Description false, but recognised by trade—Non-brewed vinegar—Intent to defraud—

Whether offence against statute—Merchandise Marks Act 1887, s 2(1)(d). **Kat v Diment**

[1950] 2 657, KBD.

Description recognised by trade—Rolled gold cuff-links—Front only of links rolled gold—

Description equivocal, but not false bearing in mind cost of article and usages of trade—

Description not likely to mislead public—Whether a false trade description for purposes of

Merchandise Marks Act 1887, s 2(2) as substituted by Merchandise Marks Act 1953, s 4.

Kingston-upon-Thames Corp v F W Woolworth & Co Ltd [1968] 1 401, QBD.

Jurisdiction of court to fix standard for commodity—Merchandise Marks Act 1887, s 2. **Stott**

v Green, Same v Henshaw [1936] 2 354, KBD.

Meaning of trade description—

Indication of composition of goods—Indication of physical characteristics—Gas cooker—

False statement that battery torch supplied with cooker—Whether 'composition' including

components—Whether indication of physical characteristics of goods—Trade Descriptions

Act 1968, s 2. **British Gas Corporation v Lubbock** [1974] 1 188, QBD.

Indication of history including previous ownership or use—Previous use—Motor car—

Mileage—Mileage recorded on mileometer substantially less than actual mileage—Whether

reading on mileometer a trade description—Trade Descriptions Act 1968, ss 1(1), 2(1)(j).

Tarleton Engineering Co Ltd v Natrass [1973] 3 699, QBD, **R v Hammerton Cars Ltd**

[1976] 3 758, CA.

Indication of specified matters—Matters truth or falsity of which can be established as a

matter of fact—Indication as to value—Goods contained in wrapper bearing words 'extra

value'—Whether words a trade description—Trade Descriptions Act 1968, s 2(1). **Cadbury**

Ltd v Halliday [1975] 2 226, QBD.

Statement of nature of article sold—Egg substitute—'Equivalent in use to 12 eggs'—Whole

description to be considered—Merchandise Marks Act 1887, s 3. **Evans v The British**

Doughnut Co Ltd [1944] 1 158, KBD.

TRADE DESCRIPTION (cont)

False trade description (cont)—

Passing off—Geographical name. *See* **Passing off** (Geographical name—False trade description).

Possession of goods to which false trade description is applied—

Possession—Goods of appellant company deposited in cold store of cold storage company—Weight of goods wrongly stated by producer on wrapped goods—Whether goods were in the possession of the appellant company while in cold store—Merchandise Marks Act 1887, s 2(2) (as amended by Merchandise Marks Act 1953, s 4). **Towers & Co Ltd v Gray** [1961] 2 68, QBD.

Prosecution—

Procedure—Sampling—Sample purchased by officer of local authority—Procedure prescribed by Food and Drugs Act 1938, not applied—Whether procedure applicable—Merchandise Marks Act 1887, s 2(1)(d)—Food and Drugs Act 1938, s 70(1). **Evans v Clinical Products Ltd** [1943] 1 222, KBD.

Scope of prohibition—

Description attached to goods provided in course of trade or business—Motor vehicle—Vehicle brought to accused's garage for MOT test—Examiner giving notification of refusal of test certificate—Notification containing statement that tyres suffering from specified defect and unsafe—Tyres not suffering from defect specified—Statement a false description of vehicle—False description not attached to vehicle provided in course of trade—Statement not in breach of prohibition on false trade descriptions—Trade Descriptions Act 1968, s 1. **Wycombe Marsh Garages Ltd v Fowler** [1972] 3 248, QBD.

Selling goods to which false trade description is applied—

Sells—Whether person sells who appropriates or transfers goods under agreement for sale of unascertained goods—Merchandise Marks Act 1887, s 2(2) (as amended by Merchandise Marks Act 1953, s 4). **Preston v Albuery** [1963] 3 897, QBD.

Supplying goods to which false trade description is applied. *See* Supplying goods to which false trade description is applied, *post*.

Time at which false description applied—

Cause to apply false trade description to goods—Manufacturer sold goods to retailer in August—Goods displayed by retailer in December and sold—Goods then short in volume or weight—Falsity of trade description at time when manufacturer applied it not proved—Whether false trade description applied at time of sale by retailer—Whether manufacturer caused retailer to apply false trade description—Merchandise Marks Act 1887, s 2(1). **Shulton (Great Britain) Ltd v Slough Borough Council** [1967] 2 137, QBD.

Description applied to goods by seller after sale completed—Whether an offence—Trade Descriptions Act 1968, s 1(1)(a). **Wickens Motors (Gloucester) Ltd v Hall** [1972] 3 759, QBD.

Short deliveries of milk—Customer subsequently overcharged in monthly account—Overcharge not made at time of delivery, no application of a false trade description—Merchandise Marks Act 1887, s 2(2). **Stoodley v H D Thomas & Sons Ltd and Cooksey** [1945] 2 89, KBD.

Supply of goods to which false trade description is applied—Meaning of 'is applied'—Trade Descriptions Act 1968, s 1(1)(b). **Norman v Bennett** [1974] 3 351, QBD.

Time limit for prosecutions—

Time limit 12 months—Exception where time limit six months—Exception applying where offence supplying goods to which false trade description applied by oral statement—Car dealer advertising Bedford goods vehicle for sale—Advertisement giving false description of vehicle—Car dealer only having one Bedford goods vehicle in possession at time of advertisement—Prospective purchaser later visiting dealer and seeing several vehicles—Dealer informing purchaser that a particular vehicle the one referred to in advertisement—Purchaser buying that vehicle—Dealer charged more than six months afterwards with supplying vehicle to which false trade description applied—Whether trade description applied by oral statement—Whether prosecution brought within time limit—Magistrates' Courts Act 1952, s 104—Trade Descriptions Act 1968, ss 1(1)(b), 19(2)(4). **Rees v Munday** [1974] 3 506, QBD.

Goods—

Application to goods. *See* False trade description—Application to goods, *ante*.

Hotel. *See* False or misleading statement as to services etc—Statement made recklessly—Hotel accommodation, *ante*.

Indication of origin on imported goods—

Breach of statutory duty—

Civil proceedings—Whether civil action available—Plaintiffs importers of foreign goods only—Merchandise Marks Act 1926, s 1. **London Armoury Co Ltd v Ever Ready Co (Great Britain) Ltd** [1941] 1 364, KBD.

Umbrellas—

Ribs and tubes made of iron or steel wire—Imported from Hong Kong as complete umbrellas—Whether necessary for ribs and tubes to be marked with an indication of origin—Merchandise Marks Act 1926, s 5(3)—Merchandise Marks (Imported Goods) No 10 Order, 1933 (S R & O 1933 No 491), art 1. **Littlewoods Mail Order Stores Ltd v Storey** [1962] 2 865, QBD.

Manufacturer. *See* Offences due to fault of another person—Manufacturer and retailer, *post*.

Members' club—Transactions with members—

Application of Trade Descriptions Act 1968. *See* **Club** (Members' club—Transactions with members—Application of Trade Descriptions Act 1968).

Milk bottle. *See* False trade description—Falsity of description—Application of trade description to contents rather than container, *ante*.

Mistake. *See* Defence to proceedings—Mistake, *ante*.

TRADE DESCRIPTION (cont)

Offences due to fault of another person—

Liability of other person for offence—

Causal connection between act or default and commission of offence—Need to prove causal connection—Car dealers entering car for auction—Mileage of car in excess of nr figure recorded on mileometer evidence that car dealers having tampered with mileometer—Car purchased by car sales firm—Sales firm offering car for sale without checking mileage or adjusting mileometer—Whether commission of offence by sale firm due to act or default of car dealers—Trade Descriptions Act 1968, s 23. **Tarleton Engineering Co Ltd v Natrass** [1973] 3 699, QBD.

Liability of other person to be charged with offence—

Proof of commission of offence necessary to establish liability of other person—False or misleading statements as to services—Statement made recklessly by manager of business—Proprietor of business charged with offence—Proprietor having no knowledge of statement—Proprietor acquitted because of absence of mens rea—Manager also charged on ground that commission of offence due to his default—Whether manager entitled to acquittal if proprietor acquitted—Trade Descriptions Act 1968, ss 14(1)(b), 23. **Coupe v Guyett** [1973] 2 1058, QBD.

Manufacturer and retailer—

Goods supplied by manufacturer bearing false indication as to value—Goods also bearing sufficient information to indicate falsity to retailer—Goods offered for sale by retailer—Whether commission of offence by retailer due to act or default of manufacturer—Trade Descriptions Act 1968, s 23. **Cadbury Ltd v Halliday** [1975] 2 226, QBD.

Profession. *See* False or misleading statement as to services etc—Statement in the course of any trade or business, *ante*.

Sale of goods by description. *See* **Sale of goods** (Description—Trade description).

Supplying goods to which false trade description is applied—

Knowledge of false description—

Knowledge on part of supplier that description has been applied a prerequisite of offence—Car suffering from rust damage—Damage filled in by owner with plastic filling and painted roughly—Sale by owner to car dealer—Filling repainted by dealer to conceal damage—Sale to second dealer—No knowledge by second dealer of repainting—Sale by second dealer to subsequent purchaser—Whether second dealer guilty of offence—Trade Descriptions Act 1968, s 1(1)(b). **Cottee v Douglas Seaton (Used Cars) Ltd** [1972] 3 750, QBD.

Knowledge on part of supplier that description false—Whether necessary to prove that supplier had actual or constructive knowledge that description false—Trade Descriptions Act 1968, s 1(1)(b). **Cottee v Douglas Seaton (Used Cars) Ltd** [1972] 3 750, QBD.

Partners—Partners in firm selling secondhand cars—First partner's function to sell cars—Second partner's function to deal with administrative work—First partner selling car to which false trade description applied—Second partner having no knowledge or means of knowledge of false representation—Partners jointly charged with offence—Whether second partner, in absence of statutory defence, vicariously liable for application of false trade description—Trade Descriptions Act 1968, s 1(1). **Clode v Barnes** [1974] 1 1166, QBD.

Supply—

Contract for sale of goods—Whether goods supplied when contract made or when goods delivered to purchaser—Trade Descriptions Act 1968, s 1(1)(b). **Rees v Munday** [1974] 3 506, QBD.

Time limit for prosecutions. *See* False trade description—Time limit for prosecutions, *ante*.

Trade usage. *See* False trade description—Falsity of description, *ante*.

TRADE DISPUTE

Acts done in contemplation or furtherance of trade dispute—

Immunity from civil action—

Inducement of breach of contract of employment—Employee-managers of on-licensed premises—Questionnaire of trade union seeking information of managers' terms of employment—Managers asked inter alia to state weekly sales and total wages bill—Express or implied terms of employment not to disclose confidential information—Inducement to disclose information—Interference with existing contractual obligations—Incitement to commit breach of contract of service—Whether questionnaire issued in contemplation or furtherance of a trade dispute—Trade Disputes Act 1906, s 3. **Bents Brewery Co Ltd v Hogan** [1945] 2 570, Assizes.

In contemplation or furtherance of—

Acts committed before commencement of illegal strike—Whether acts 'in furtherance of' strike—Trade Disputes and Trade Unions Act 1927, s 1. **R v Tearse, Lee and Haston and Keen** [1944] 2 403, CCA.

Inducement to commit breach of contract of employment—

Evidence of knowledge of contract. **D C Thomson & Co Ltd v Deakin** [1952] 2 361, CA.

Non-unionist's contract of employment—Union's threat to call strike—No express exclusion of strike action in contract of employment—Notice of sufficient length to terminate contracts of employment of prospective strikers—Purpose to procure dismissal of plaintiff who formed breakaway union—Plaintiff dismissed as result—Strike notice lawful—Tort of intimidation not established—Protection under Trade Disputes Act 1906, s 3. **Morgan v Fry** [1968] 3 452, CA.

Sub-contract by main building contractors for labour only—Whether sub-contract a contract of employment—Trade Disputes Act 1906, s 3—Trade Disputes Act 1965, s 1. **Emerald Construction Co Ltd v Lowthian** [1966] 1 1013, CA.

Threat to induce employees to break contracts of employment—Overtime dispute—Trade dispute—Whether immunity conferred by statute—Trade Disputes Act 1906, s 3. **Camden Exhibition and Display Ltd v Lynott** [1965] 3 28, CA.

TRADE DISPUTE (cont)

Acts done in contemplation or furtherance of trade dispute (cont)—

Inducement to commit breach of contract of employment (cont)—

Threat to induce employees to break contracts of employment—Purpose of threat to secure recognition of union—Employers resisting threat—Whether immunity conferred—Trade Disputes Act 1906, s 3. **J T Stratford & Son Ltd v Lindley** [1964] 3 102, HL.

Interference with trade, business or employment—

Overriding purpose advancement of defendant union in rivalry with another union—No trade dispute—Picketing—Interference and threatened interference with fuel oil supplied to plaintiff company's hotel—Injunction—Whether injunction would be granted against threatened tort—Trade Disputes Act 1906, ss 3, 4, 5(3). **Torquay Hotel Co Ltd v Cousins** [1969] 1 522, CA.

Threat to strike in breach of contract with employers—Purpose of threat to secure dismissal of employee—Whether authors of threats liable for tort of intimidation—Whether immunity conferred—Conspiracy, and Protection of Property Act 1875, s 3 (as amended by Trade Disputes Act 1906, s 1)—Trade Disputes Act 1906, s 3. **Rookes v Barnard** [1964] 1 367, HL.

Meaning of trade dispute—

Acts of local committee after ineffective resolution for expulsion of member—Local committee preventing member from obtaining employment—Whether dispute between member and committee a 'trade dispute'—Whether committee's acts 'in furtherance of a trade dispute'—Trade Disputes Act 1906, ss 3, 5(3). **Huntley v Thornton** [1957] 1 234, ChD.

Picketing. *See* Picketing, *post*.

Breach of peace. *See* Picketing—Breach of peace anticipated, *post*.

Conspiracy—

Motive—

Furtherance of trade dispute—Burden of proof—Trade Disputes Act 1906, s 1. **J T Stratford & Son Ltd v Lindley** [1964] 3 102, HL.

Legitimate protection of interests of trade union—Furtherance of trade dispute—Trade Disputes Act 1906, s 5. **Morgan v Fry** [1968] 3 452, CA.

Dispute between employers and workmen or workmen and workmen—

Claim by union for recognition—

Claim made after refusal of company to negotiate over dismissal of employees—Whether trade dispute—Trade Disputes (Arbitration and Inquiry) Ordinance (Laws of Trinidad and Tobago 1950) s 2(1). **Beetham v Trinidad Cement Ltd** [1960] 1 274, PC.

Dispute connected with employment or terms or conditions of employment—

Controversy between two unions—No controversy as to employment by company—Union instructing members not to handle company's barges—Whether trade dispute—Trade Disputes Act 1906, ss 3, 5(3). **J T Stratford & Son Ltd v Lindley** [1964] 3 102, HL.

Dispute as to agreement restricting embargoes or overtime working—Whether dispute as to terms and conditions of employment—Whether 'trade dispute'—Trade Disputes Act 1906, s 5(3). **Camden Exhibition and Display Ltd v Lynott** [1965] 3 28, CA.

Illegal strike. *See* Acts done in contemplation or furtherance of trade dispute—In contemplation or furtherance of—Acts committed before commencement of illegal strike, *ante*.

Immunity from civil action—

Acts done in contemplation or furtherance of trade dispute. *See* Acts done in contemplation or furtherance of trade dispute—Immunity from civil action, *ante*.

Inducement of breach of contract. *See* Acts done in contemplation or furtherance of trade dispute—Inducement to commit breach of contract of employment, *ante*.

Industrial dispute. *See* Industrial relations (Industrial dispute).

Interference with trade, business or employment. *See* Acts done in contemplation or furtherance of trade dispute—Interference with trade, business or employment, *ante*.

Master and servant. *See* Master and servant (Trade dispute).

Meaning of. *See* Acts done in contemplation or furtherance of trade dispute—Meaning of trade dispute, *ante*.

National Arbitration Council. *See* Master and servant (National Arbitration Council).

National Arbitration Tribunal. *See* Master and servant (National Arbitration Tribunal).

Picketing—

Breach of peace anticipated—

Obstruction of police—Right of police to take steps to prevent anticipated breach of peace—Whether police justified in limiting number of pickets—Discretion of police officer to take steps that he thought proper—Prevention of Crimes Amendment Act 1885, s 2. **Piddington v Bates, Robson v Ribton-Turner** [1960] 3 660, QBD.

Nuisance—

Interference with convenience must be substantial to constitute nuisance actionable at law—Injunction nevertheless able to be granted quia timet. **Torquay Hotel Co Ltd v Cousins** [1968] 3 43, ChD.

Obstruction of highway—

Right of peaceful picketing—Attendance at specified place for purpose of peaceful picketing—Obstruction of police—Intimidation—40 pickets moving in continuous circle on highway outside main entrance to factory—Approaching vehicles caused to halt temporarily and foot passengers impeded—No breach of peace anticipated—Whether intimidation—Whether conduct justified—Trade Disputes Act 1906, s 2(1). **Tynan v Balmer** [1966] 2 133, QBD.

TRADE DISPUTE (cont)

Picketing (cont)—

Obstruction of highway (cont)—

Right of peaceful picketing—Attendance at specified place for purpose of peaceful picketing—Attendance only for purpose of peaceful communication or persuasion—Attendance for that purpose not of itself an offence—Right to stop vehicle on highway for purpose of peaceful persuasion—Vehicle attempting to drive on to building site during building workers' strike—Driver stopping vehicle at picketer's request—Picketer failing to persuade driver not to drive on to site—Picketer then standing in front of vehicle to prevent it moving—Whether an implied right to stop and detain vehicles on highway for purpose of peaceful persuasion—Whether picketer attending on highway only for purpose of peaceful persuasion—Highways Act 1959, s 121—Industrial Relations Act 1971, s 134(1) (2). **Broome v Director of Public Prosecutions** [1974] 1 314, HL.

Right of peaceful picketing—

Nature of right—Immunity from prosecution or civil action in certain circumstances—Picketer asserting right to communicate with driver of vehicle—Picketer one of large crowd—Police apprehending likelihood of disorder—Police forming cordon to enable vehicle to pass freely—Effect of cordon to prevent picketer communicating with driver—Picketer assaulting constable in attempt to break through cordon—Whether police infringing right of picketer to communicate with driver—Whether constable assaulted in execution of his duty—Industrial Relations Act 1971, s 134(1)(2). **Kavanagh v Hiscock** [1974] 2 177, QBD.

Reference—

Fair Wages Resolution—

Condition of contract for reference by Minister of Labour of dispute whether Fair Wages Resolution being complied with to independent tribunal—Reference by Minister to Industrial Court—Validity—Jurisdiction of Industrial Court to hear reference—Whether mandamus to hear reference would lie—Industrial Courts Act 1919, s 2(3)—Standard Conditions of Government Contracts for Stores Purchases, Edition of September, 1962, condition 17, cl 3. **R v Industrial Court, ex parte ASSET** [1964] 3 130, QBD.

Unemployment benefit—

Disqualification of persons losing employment because of stoppage of work—

Exception. *See* **National Insurance** (Unemployment benefit)—Disqualification of persons losing employment because of stoppage of work due to trade dispute—Exception).

TRADE EFFLUENT

Discharge into river. *See* **Water and watercourses** (Pollution of river—Discharge of trade effluent).

Discharge into sewer—

Contract regulating—

Duration of contract. *See* **Contract** (Time—Duration of contract—Whether determinable by reasonable notice—Contract regulating the discharge of trade effluent into the public sewer).

TRADE LICENCE

Vehicle. *See* **Road traffic** (Trade licence).

TRADE MARK

Assignment—

Restriction on assignment—

Exclusive rights—Enemy property—Assignment of trade marks with goodwill by Custodian of Enemy Property—Retention by former owner of right to use mark at common law—'Exclusive rights'—Effectiveness of assignment—Failure to advertise assignment—Trade Marks Act 1938, s 22(1)(4)(7). **R J Reuter Co Ltd v Ferd Mulhens** [1953] 2 1160, CA.

Correction of register—

Entry of memorandum relating to a trade mark—

Agreement between registered proprietor and registered user imposing restrictions on statutory right of registered proprietor—Discretion of registrar—Whether entry of memorandum would be a proper exercise of discretion—Trade Marks Act 1938, s 34(1) (e)—Trade Marks Rules 1938 (S R & O 1938 No 661), r 85. **Re Svenska Aktiebolaget Gasaccumulator's Application** [1962] 1 886, CA.

Enemy property—

Trade marks vested in custodian. *See* **Trading with the enemy** (Custody of enemy property—Vesting of property in custodian of enemy property—Trade marks).

Infringement—

Advertisement—

Use of plaintiff's mark to describe plaintiff's goods in list advertising defendant's goods—Use to show that defendant's goods identical in substance but cheaper—Whether use was 'in relation to defendant's goods'—Trade Marks Act 1938, ss 4, 68(1), 71(2). **Bismag Ltd v Amblins (Chemists) Ltd** [1940] 2 608, CA.

Mistake—

Directory of trade marks—Ownership of plaintiff's trade mark attributed to another company—Mistake by publishers—Publication of inaccurate statement not a 'use' of the trade mark—Trade Marks Act 1938, ss 4(1), 68(2). **M Ravok (Weatherwear) Ltd v National Trade Press Ltd** [1955] 1 621, QBD.

Name—

Defence—Bona fide use by person of own name—'Bona fide'—Maker's name—Confusion in the course of trade—Trade Marks Act 1938, ss 4(1), 8(1). **Baume & Co Ltd v A H Moore Ltd** [1958] 2 113, CA.

Sale of reconditioned goods—

Reconditioned goods including parts not manufactured by registered proprietors—Trade Marks Act 1905, s 39. **Hoover Ltd v Air-Way Ltd** [1936] 1 466, ChD.

TRADE MARK (cont)

Infringement (cont)—

Use of similar trade mark—

Similar—Coca-Cola and Pepsi-Cola—Unfair Competition Act (Canada) 1932, ss 2(k), 3(c), 23(5)(b). **Coca-Cola Co of Canada Ltd v Pepsi-Cola Co of Canada Ltd** [1942] 1 615, PC.

Licensing agreement—

Inspection of account. *See* **Account** (Inspection—Scope of obligation—Licence agreement—Agreement in relation to patents and trade marks).

Mark—

Representation or description of external appearance of goods—

Colour scheme—Scheme a complete representation of goods as appearing to eye—Capsules containing drugs—Colour scheme for complete capsule—Whether external appearances of goods capable of constituting a 'mark'. **Smith Kline and French Laboratories Ltd v Sterling-Winthrop Group Ltd** [1975] 2 578, HL.

Opposition to registration—

Confusion—

Contrary to morality—Mark formerly used by opponent in connection with his business in Czechoslovakia and Central Europe—Business nationalised in 1948 by Czechoslovakian law—No compensation paid—Opponent migrated to Canada—Nationalised business began exporting to United Kingdom—Such exporting continued thereafter—Opponent having established similar business in Canada began exporting to United Kingdom in 1960—Canadian exports small in comparison with exports from Czechoslovakian business—Whether Czechoslovakian business entitled to registration of mark—Trade Marks Act 1938, s 11. **Re Stredoceska Fruta Narodni Podnik's Application No B.836429** [1968] 2 913, ChD.

Use of mark alleged to be contrary to Merchandise Marks Act 1887—Forging trade mark—Foreign mark protected by law in Convention country—Discretion over registration of trade mark—Possibility of confusion as result of foreign advertisements reaching England—Trade Marks Act 1938, ss 11, 17, 52—Merchandise Marks Act 1887, ss 2(1), 3(1), 4. **Re Application of Vitamins Ltd** [1955] 3 827, ChD.

Use of mark on repaired stockings—Application to register mark for use on manufactured stockings—Opposition by manufacturers who owned another mark on ground of similarity—Trade mark generally limited to indication of origin—Use 'in relation' to goods—Connection in the course of trade—Trade Marks Act 1938, ss 3, 4(1), 9, 11, 12, 17(1), 28, 62, 65, 68. **Aristoc Ltd v Rysta Ltd** [1945] 1 34, HL.

Owner of mark sole agent in United Kingdom of manufacturer of German calculating machine under agreement—

Agreement terminated—Whether original registration in owner's name valid—Whether retention of mark by owner likely to cause deception or confusion to public—Whether court would exercise discretion and expunge mark—Trade Marks Act 1938, s 32. **Re Diehl K G's Application** [1969] 3 338, ChD.

Rectification of register—

Mark by reason of its being likely to deceive or cause confusion disentitled to protection in a court of justice—

Mark not likely to deceive or cause confusion at date of original registration—Mark subsequently becoming likely to cause confusion—Likelihood of confusion not arising from any blameworthy conduct on the part of the registered proprietor—Whether court having power to rectify register by expunging entry—Trade Marks Act 1938, ss 11, 32(1). **General Electric Co v The General Electric Co Ltd** [1972] 2 507, HL.

Phonetic similarity to mark already in use—Application for removal from register more than seven years after registration—What must be established to show mark disentitled to protection—Discretion to remove registration—Trade Marks Act 1938, ss 11, 32. **Berlei (UK) Ltd v Bali Brassiere Co Inc** [1969] 2 812, HL.

Registration—

Defensive registration of well-known trade marks—

Use of mark in relation to other goods likely to be taken as indicating connection in course of trade—Character of evidence required—Trade Marks Act 1938, s 27(1). **Re Ferodo Ltd's Application** [1945] 2 95, ChD.

Discretion—

Circumstances which may be considered in exercise of discretion—No intention to use mark unless free publicity attached from name of television film feature—Series of 'Western' films shown in USA under title 'Rawhide'—Application by toy manufacturers to register 'Rawhide' in anticipation of series being shown in this country—Merchandising rights of film assigned to company other than applicants—Numerous such applications by applicants in respect of similar marks. **Re Cheryl Playthings Ltd's Application** [1962] 2 86, ChD.

Distinctiveness—

Colouring scheme—Mark adapted to distinguish goods with which applicant connected—Mark inherently adapted to distinguish—Combination of colours—Scheme in fact distinctive of applicant's goods—No motive for other proprietor to adopt scheme except to benefit from applicant's established goodwill—Whether scheme of colouring 'inherently adapted to distinguish' applicant's goods—Whether a 'distinctive mark'—Trade Marks Act 1938, s 9(1)(e)(2)(3)(a). **Smith Kline and French Laboratories Ltd v Sterling-Winthrop Group Ltd** [1975] 2 578, HL.

Descriptive or distinctive words—'Shredded Wheat'—Capability of registration—Distinctive or merely descriptive words—Secondary meaning—Passing off—Product similar in shape but not in size—Carton quite different in make-up—Trade Mark and Design Act (RSC 1927, ss 5(1), 13. **Canadian Shredded Wheat Co Ltd v Kellogg Co of Canada Ltd** [1938] 1 618, PC.

Geographical name—'Glastonburys'—Whether mark adapted to distinguish goods with which applicant connected—Rectification of register—Trade Marks Act 1905—1919, ss 3, 9(4), (5), 11, 19, 44. **Re Clarke, Son & Morland Ltd's Trade Mark** [1938] 2 377, HL.

TRADE MARK (cont)

Registration (cont)—

Distinctiveness (cont)—

Geographical name—'Livron'—Invented word—Discretion to refuse registration—Mark calculated to deceive—Trade Marks Act 1905—1919, ss 9, 11, 35—Trade Marks Act 1919, s 9. **Re Application of Société des Usines Chimiques Rhonepoulenc, Re Trade Mark, 'Livron', of Boots Pure Drug Co Ltd** [1937] 4 23, CA.

Geographical name—'Yorkshire'—Solid drawn tubes and capillary fittings—Whether mark adapted to distinguish goods with which applicant connected—Whether mark inherently adapted to distinguish—Adapted to distinguish—Trade Marks Act 1938, s 9(1)(e)(3). **Yorkshire Copper Works Ltd v Registrar of Trade Marks** [1954] 1 570, HL.

Invented word—Slang term—'Oomphies'—American slang term—Whether invented word—Trade Marks Act 1938, s 9(1)(c)(d)(11). **Re La Marquise Footwear's Application** [1946] 2 497, ChD.

Machine twist—'Sheen'—Registrar consulting about desirability of registering word—Whether word 'Sheen' sufficiently distinctive—Whether consultation irregular—Trade Marks Act 1905—1919, ss 9(5), 64(14). **Re J & P Coats Ltd's Application** [1936] 2 975, CA.

Mark registered for roses—Intended user as variety name—Trade Marks Act 1938, s 9(1)(d), s 11. **Re Wheatcroft Bros Ltd** [1954] 1 110, ChD.

Opposition. *See* Opposition to registration, *ante*.

Phonetic equivalent of unregistrable word—

Whether registrable—Trade Marks Act 1938, s 9(1). **Electrix Ltd v Electrolux Ltd** [1959] 3 170, HL.

Prohibition of registration of identical and resembling trade marks—

Application to register 'Vivicillin'—Three trade marks consisting of 'Cyllin' with or without additions already registered—Comparison of marks—No probability of confusion—Trade Marks Act 1938, ss 9(1)(c), 12(1), 17(2), 18(1). **Re an Application by H E N Enoch** [1945] 2 637, ChD.

Mark likely to deceive or cause confusion with mark already on register—Defensive registration—Notional user—Trade Marks Act 1938, ss 12, 27(1)(6). **Re Eastex Manufacturing Co Ltd's Application** [1947] 2 55, ChD.

Mark likely to deceive or cause confusion—Mark in respect of sulphadiazine preparations—Scheduled poison, supplied only under statutory regulations—Trade Marks Act 1938, s 12(1). **Re Bayer Products Ltd's Application** [1947] 2 188, CA.

Removal from register—

Non-user—

Special circumstances in the trade—Foreign manufacturing company—War conditions preventing importation of goods—Trade Marks Act 1938, s 26(1)(b)(3). **Aktiebolaget Manus v R J Fullwood & Bland Ltd** [1949] 1 205, CA.

Whether trade mark in trust for manufacturer. *See* Trust and trustee (Constructive trust—Trade mark).

TRADE NAME

Passing off. *See* Passing off (Trade name).

Registration—

Default in registration—

Disability of persons in default—Relief against disability—Grounds of relief—Belief that relief granted on request no 'sufficient cause' for failing to register—Effect of interpleading on plea of default under Act—Registration of Business Names Act 1916, s 8(1)(a). **Watson v Park Royal (Caterers) Ltd** [1961] 2 346, QBD.

TRADE PROTECTION ASSOCIATION

Non-trading body—

Conspiracy to procure breach of contract—

Right of association to bring action. **British Motor Trade Assn v Salvadori** [1949] 1 208, ChD.

Price maintenance—

Stop list—

Attempted purchase by person on stop list—Purchase money paid—Refusal to deliver—Recovery of price—Illegality. **Berg v Sadler & Moore** [1937] 1 637, CA.

Rule providing for placing on stop list unless fine within limits to be fixed by association paid—Validity. **Thorne v Motor Trade Assn** [1937] 3 157, 323 HL.

TRADE UNION

Action by member against union—

Matter of substance, tainted with oppression—

Invasion of members' individual rights. **Edwards v Halliwell** [1950] 2 1064, CA.

Agreement—

Enforceability—

Agreement to provide benefits—Superannuation benefit—Union illegal at common law—Trade Union Act 1871, s 4. **Miller v Amalgamated Engineering Union** [1938] 2 517, ChD.

Breach of contract—

Inducement to commit—

Tort. *See* Tort (Inducement to commit breach of contract—Inference of intention—Trade union).

Breach of rules—

Complaint to industrial tribunal. *See* Industrial relations (Organisation of workers—Breach of rules—Complaint by member against organisation).

TRADE UNION (cont)

Collective agreement—

Joint negotiating committee of employer and unions—

Agreements over period of years on procedure, wages and conditions of work—New agreement negotiated by committee on majority decision of participating unions—Strike action by dissenting minority—Intention to create legally enforceable contracts not expressed in agreements—Surrounding circumstances showing climate of opinion adverse to such intention—Wording of agreements largely aspirational—Whether agreements enforceable at law. **Ford Motor Co Ltd v Amalgamated Union of Engineering and Foundry Workers** [1969] 2 481, QBD.

Committee meeting—

Presence of non-member. *See* **Meeting** (Committee meeting—Presence of non-member).

Condition of employment—

Employment by public authority—

Employee given right to be represented by official of one union—Employee joining another union—Whether entitled to be represented by official of that union—Whether employee placed under disability or disadvantage by 'condition' of employment—Whether restriction as to representation a 'condition'—Trade Disputes and Trade Unions Act 1927, s 6. **London Passenger Transport Board v Moscrop** [1942] 1 97, HL.

Conspiracy—

Position at common law—

Acts causing loss—Real purpose of combiners—Embargo. **Crofter Hand Woven Harris Tweed Co Ltd v Veitch** [1942] 1 142, HL.

Definition of trade union—

Combination for regulating relations between masters and masters—

Combination for imposing restrictive conditions on trade or business—Whether Co-operative Union Ltd registered as an industrial and provident society a trade union—Trade Union Act Amendment Act 1876, s 16—Trade Union Act 1913, s 2(1). **Birtley District Co-operative Society Ltd v Windy Nook & District Industrial Co-operative Society Ltd** [1959] 1 623, QBD.

Dismissal—

Official—

Elected officer. *See* **Official**—Dismissal—Elected officer, *post*.

Dissolution—

Registered trade union—

Jurisdiction of court to order dissolution—Absence of statutory machinery to secure proper winding-up. **Keys v Boulter (No 2)** [1972] 2 303, ChD.

Domestic tribunal—

Recommendation—

Trade union representing certain exhibitors represented on tribunal of film renters' association—Tribunal's recommendation to ban films to exhibitor, member of another trade union—Validity of recommendation. **Byrne v Kinematograph Renters Society Ltd** [1958] 2 579, ChD.

Review of decision—

Jurisdiction of court—Adjudication by tribunal on member's conduct—Provision for appeal to executive of federation—Action begun by member without proceeding to appeal—Jurisdiction of court. **White v Kuzych** [1951] 2 435, PC.

Jurisdiction of court—Disciplinary action against member. **Lee v Showmen's Guild of Great Britain** [1952] 1 1175, CA.

Whether jurisdiction of court ousted. *See* **Rules**—Election—Nominee member of proscribed organisation, *post*.

Expulsion—

Deficiency in natural justice—

Whether curable. *See* **Natural justice** (Trade union—Deficiency of natural justice before trial tribunal—Curability).

Rules giving unfettered power. *See* **Rules**—Validity, *post*.

Expulsion of member—

Appeal—

Appeal allowed against finding that charge not proved—Decision on appeal in absence of member charged—Contrary to natural justice—Union's rule empowering executive council or management committee to expel member—Decision of management committee that charge against member not proven—Appeal by member of management committee to executive council—Decision by executive council, in absence of member charged, to expel him—Whether executive council empowered under rules to hear appeal against acquittal—Interlocutory injunction at suit of expelled member. **Hiles v Amalgamated Society of Woodworkers** [1967] 3 70, ChD.

Appeal by member to appeal committee—

Date of hearing of appeals fixed by rules—Amalgamation of union with another union prior to date of hearing—New rules containing no provision for pending appeals—Validity of expulsion. **Braithwaite v Electrical Electronic and Telecommunication Union—Plumbing Trades Union** [1969] 2 859, CA.

Application of rules of natural justice—

Opinion of council—Rule empowering executive council to expel any member in its opinion unfit for membership—Right of appeal to annual conference—No requirement that right of appeal be exhausted before application to court—Decision to expel member made without notice of charge or opportunity for him to be heard—Whether opinion of executive council was one to be formed after inquiry, so that rules of natural justice would apply to the making of the decision—Whether resort to court could be had before exhaustion of right of appeal. **Lawlor v Union of Post Office Workers** [1965] 1 353, ChD.

Rule under which expulsion awarded not mentioned in charges—Member expelled not present at hearing—Power of court to grant relief against expulsion. **Annamunthodo v Oilfields Workers' Trade Union** [1961] 3 621, PC.

TRADE UNION (cont)

Expulsion of member (cont)—

Damages—

Action by member against union for breach of contract—Right to damages for breach of contract. **Bonsor v Musicians' Union** [1955] 3 518, HL.

Trade union member expelled from membership and employer induced to terminate contract of service—Factors relevant to assessment of damages—On appeal, undertaking by union to reinstate as member—Effect on damages. **Edwards v Society of Graphical and Allied Trades** [1970] 3 689, CA.

Power to expel member—

Member leaving employment without notice—Rule providing for suspension for such conduct—Rule providing for expulsion upon conduct detrimental to interests of the union—Expulsion of member—Validity. **Evans v National Union of Printing, Bookbinding and Paper Workers** [1938] 4 51, KBD.

Right of union to expel member—

Implied term of contract of membership—Expulsion by union, affiliated to Trades Union Congress, pursuant to award of disputes committee—All members recruited in certain areas after a certain time to be excluded—Recruitment in disregard of principles of Bridlington Agreement—Whether term implied in contract of membership that union entitled to do everything necessary to conform with Bridlington Agreement. **Spring v National Amalgamated Stevedores and Dockers Society** [1956] 2 221, ChCt, County Palatine of Lancaster.

Foss v Harbottle—

Application of rule. *See* Legal proceedings—Action for wrong done to union, *post*.

Funds—

Investment—

Held by trustees. *See* Rules—Alteration of rules—Property of union, *post*.

Political. *See* Political fund, *post*.

Income tax—

Exemption. *See* Income tax (Exemption—Trade union).

Jurisdiction of court. *See* Domestic tribunal—Review of decision—Jurisdiction of court, *ante*.

Legal assistance—

Advice not tendered before limitation period expired—

Extension of time. *See* Limitation of action (Extension of time limit—Material fact outside knowledge of plaintiff—Ignorance of claim against employer).

Implied power to support servant's litigation to vindicate reputation. *See* Maintenance of action (Common interest—Trade union employing salaried officials).

Legal assistance to members—

Duty of union—

Alleged failure of union to pursue a claim on behalf of a member against her employers for damages for personal injuries—Cause of action becoming statute barred—Action by member against union, and against union's officer, for alleged breach of contract and for alleged negligence—Union's rules provided for legal assistance to members—Whether this created a contractual obligation and extent of such obligation—Whether any loss or damage where member's alleged claim had no prospect of success at law. **Buckley v National Union of General and Municipal Workers** [1967] 3 767, Assizes.

Alleged negligence of union in relation to member's claim for damages—Member's claim investigated and reported to central office by branch secretary in accordance with union's rules—Union's solicitor advised no cause of action—Advice communicated to member—Some two years later member apparently again raised the matter with branch secretary—No warning that any claim would become statute-barred on expiration of three-year period—Whether union in breach of duty. **Cross v British Iron, Steel and Kindred Trades Association** [1968] 1 250, CA.

Legal proceedings—

Action for wrong done to union—

Proper plaintiff—Remedy within power of union itself—Application of rule in *Foss v Harbottle*—Applicability of rule in cases of urgency—Right of action by individual members—Executive council of union acting contrary to union policy—Power of union conference to approve or disapprove actions of executive council—Urgency precluding union from taking effective action in time—Individual members entitled to injunction requiring executive council to act in accordance with union policy. **Hodgson v National and Local Government Officers Association** [1972] 1 15, ChD.

Proper plaintiff—Unregistered trade union not entitled to sue in own name—Executive council of union acting contrary to policy declared by union conference—Action by individual members of union—Rule in *Foss v Harbottle* not applicable to unregistered trade union—Individual members entitled to injunction requiring executive council to act in accordance with union policy. **Hodgson v National and Local Government Officers Association** [1972] 1 15, ChD.

Right of union to sue—

Defamatory statements relating to reputation of trade union—Trade union suing in registered name for damages for libel—Right to sue—Issue raised as preliminary point of law under RSC Ord 25, r 2. **National Union of General and Municipal Workers v Gillian** [1945] 2 593, CA.

Libel against union—Allegation of 'rigging' a ballot. **Willis v Brooks** [1947] 1 191, KBD.

Right to sue for procurement of breach of contract. **British Motor Trade Assn v Salvadori** [1949] 1 208, ChD.

Libel—

Right to sue. *See* Legal proceedings—Right of union to sue, *ante*.

Right to sue for libel. *See* Libel and slander (Parties—Right to sue—Trade union).

Member—

Action by member for wrong done to union—

Application of rule in *Foss v Harbottle*. *See* Legal proceedings—Action for wrong done to union—Proper plaintiff, *ante*.

TRADE UNION (cont)

Member (cont)—

- Action by member against union. *See* Action by member against union, *ante*.
- Contracting out of political fund. *See* Political fund—Member contracting out, *post*.
- Expulsion. *See* Expulsion of member, *ante*.

Membership—

Eligibility—

- Director of film production company—Union rule stating that the union shall consist of all employees on the technical side of film production including film directors, employee producers and script-writers—Managing directors of film production company engaged on technical side as producers, directors and script-writers—Conflict of interest—Whether managing directors were 'employees' within the rule—Validity of rule—Whether there was jurisdiction to grant an injunction against apprehended tort by a trade union—Trade Disputes Act 1906, s 4. **Boulting v Association of Cinematograph, Television and Allied Technicians** [1963] 1 716, CA.
- Person convicted of criminal offence—Rule that no person convicted of criminal offence be eligible for or retain membership—Non-disclosure in 1950 of criminal convictions in Channel Islands in 1938 and 1940—Appellant became de facto member in 1950—Whether membership void—Whether rule validated by Trade Union Act 1871, s 3. **Faramus v Film Artistes' Association** [1964] 1 25, HL.

Rules—

- Amendment—Whether union entitled to amend its rules to include persons deemed to be employees—Industrial Arbitration Act 1940—1964, (NSW) ss 5, 88E—Trade Union Act 1881—1959, (NSW) s 14(7). **Green Cab Service Ply Ltd v Whitfield** [1965] 3 695, PC.

Temporary membership for duration of the war—

- No provision for temporary membership in union's rules—Admission otherwise than in accordance with rules void. **Martin v Scottish Transport and General Workers' Union** [1952] 1 691, HL.

Membership and activities—

- Rights of workers. *See* **Industrial relations** (Trade union membership and activities—Rights of workers as against employer).

Natural justice—

- Dismissal of union official. *See* **Natural justice** (Master and servant—Dismissal of servant—Trade union official).

Natural justice. *See* **Natural justice** (Trade union).

Official—

Dismissal—

- Elected officer—Restoration of officer pending trial—Interlocutory injunction. **Leary v National Union of Vehicle Builders** [1970] 2 713, ChD.
- Natural justice. *See* **Natural justice** (Master and servant—Dismissal of servant—Trade union official).

Wrongful acts—

- Liability of union—Shop stewards—Scope of authority as agents of union—Test of liability—Whether shop stewards acting on behalf of and within scope of authority—Shop stewards guilty of unfair industrial practice—Shop stewards persisting in activities in disobedience of court orders—Union an unregistered organisation of workers—Authority of shop stewards derived from custom and practice as well as from rules of union—Shop stewards having authority to negotiate with employers and to take industrial action—Shop stewards initiating unfair industrial practice—Whether union liable—Union advising shop stewards to comply with court order to refrain from practice—Shop stewards ignoring advice—Whether union having effectively terminated shop stewards' authority so as to avoid liability for contempt—Industrial Relations Act 1971, s 96(1). **Heatons Transport (St Helens) Ltd v Transport and General Workers Union** [1972] 3 101, HL.

Picketing. *See* **Trade dispute** (Picketing).

Political fund—

Member contracting out—

- Rules approved by Registrar of Friendly Societies—Effect of approval—Rule resulting in exclusion of exempted member from office—Validity—Trade Union Act 1913, s 3(1)(b). **Birch v National Union of Railwaymen** [1950] 2 253, ChD.

Recognition—

- Sole bargaining agent. *See* **Industrial relations** (Collective bargaining—Sole bargaining agent—Recognition—Application to Industrial Court—Organisation of workers seeking negotiating rights—Trade union).

Statutory duty—

- Withdrawal of recognition by Post Office—Whether breach of statutory duty—Post Office Act 1969, Sch 1, para 11(1). **Gallagher v Post Office** [1970] 3 712, ChD.

Withdrawal of recognition of employee's trade union—

- Whether in breach of contract of service. *See* **Master and servant** (Contract of service—Breach of contract—Withdrawal of recognition from employees' trade union).

Right to sue. *See* **Legal proceedings**—Right of union to sue, *ante*.

Rules—

Alteration of rules—

- Property of union—Investment of union's funds to be held by trustees of union, of whom there were to be three—Alteration of rules with a view to establishing nominee company controlled by trustees to hold investments—Separation of functions—Alterations of rules invalid as contravening Trade Union Act 1871, s 8. **Re National Union of Railwaymen's Rules** [1968] 1 5, ChD.

Election—

- Construction—Rules for election of executive council—Condition for nomination—Nominee to have worked at industry or signed vacant book and resided in division for 12 months immediately preceding nomination—Nominee absent for eight out of 12 months—Whether nominee complied with conditions. **Watson v Smith** [1941] 2 725, ChD.

TRADE UNION (cont)

Rules (cont)—

Election (cont)—

Nominee member of proscribed organisation—Whether ineligible for election—Whether court's jurisdiction can be ousted by rules. **Leigh v National Union of Railwaymen** [1969] 3 1 1249, ChD.

Membership. *See* Membership—Rules, *ante*.

Validity—

Rules giving unfettered power of expulsion from membership—Infringement of right to work—Restraint of trade—Trade Union Act 1871, ss 3 and 4. **Edwards v Society of Graphical and Allied Trades** [1970] 3 689, CA.

Shop steward. *See* Official, *ante*.

Solicitor—

Power of trustees to authorise. *See* Trustees, *post*.

Trade dispute—

Non-recognition of union—

Trinidad and Tobago. *See* **Trinidad and Tobago** (Master and servant—Trade dispute).

Recognition—

Claim for recognition. *See* **Trade dispute** (Dispute between employers and workmen or workmen and workmen—Claim by union for recognition).

Trade dispute. *See* **Master and servant** (Trade dispute).

See **Trade dispute**.

Tribunal. *See* Domestic tribunal, *ante*.

Trustees—

Powers—

Action touching or concerning property of union—Executive council of union not functioning—Power to authorise solicitors to defend action—Trade Union Act 1871, s 9. **Keys v Boulter** [1971] 1 289, CA.

Ultra vires—

Suspension of member—

Declaration sought that suspension void—Period of suspension almost expired. *See* **Declaration** (Discretion to grant—Principles governing exercise of discretion—Declaration sought that trade union's decision to expel member, and subsequent decision to suspend him were ultra vires and void).

Unregistered trade union—

Legal proceedings. *See* Legal proceedings—Action for wrong done to union—Proper plaintiff, *ante*.

TRADE USAGE

False trade description. *See* **Trade description** (False trade description—Falsity of description).

TRADING

Sunday—

Prohibition. *See* **Sunday observance** (Prohibition on transaction of business by tradesman etc on Sunday).

TRADING RECEIPTS

Income tax. *See* **Income tax** (Profits—Trading receipts).

TRADING WITH THE ENEMY

Custody of enemy property—

Vesting of property in custodian of enemy property—

Effect of vesting—Restriction of former owner's rights to participate in any arrangements made on conclusion of peace—Meaning of property—RSC Ord 25, r 4—Trading with the Enemy (Custodian) Order 1951 (S I 1951 No 153), art 1(a). **Maerkle v British & Continental Fur Co Ltd** [1954] 3 50, CA.

Liability of custodian for income tax on proceeds of property vested in him. **Bank Voor Handel en Scheepvaart, NV v Administrator of Hungarian Property** [1954] 1 969, HL.

Power of Board of Trade to prescribe power of sale. **Vamvakas v Custodian of Enemy Property** [1952] 1 629, QBD.

Trade marks—Trade marks vested in custodian by Board of Trade—Assignment by custodian—Extent of powers of board and of custodian—"With a view to preventing the payment of money to enemies and of preserving enemy property..."—Trading with the Enemy Act 1939, s 7(1)—Distribution of German Enemy Property Act 1949, s 1(1)—Distribution of German Enemy Property (No 1) Order 1950 (S I 1950 No 1642), para 18(1)(3). **R J Reuter Co Ltd v Ferd Mulhens** [1953] 2 1160, CA.

Discretionary trust—

Principal beneficiary an enemy. *See* **Trust and trustee** (Discretionary trust—Statutory discretionary trust—Principal beneficiary an enemy).

Enemy—

Body of persons controlled by person who enemy—

English company having enemy character—Validity of acts performed on behalf of company in Germany during the war of 1939—45—Executory contract—Intercourse with enemy involved—Severance of contractual provisions. **Kuenigl v Donnersmarck** [1955] 1 46, QBD.

Individual resident in enemy territory—

Resident—Non-enemy alien resident in enemy territory—Residence not voluntary—Vesting of property by Board of Trade in Custodian of Enemy Property—Right to confer power of sale—Trading with the Enemy Act 1939, ss 2(1)(b), 7(1)(b)(c)(d). **Vamvakas v Custodian of Enemy Property** [1952] 1 629, QBD.

Having commercial, financial etc intercourse for the benefit of enemy—

Sum deposited by British subject for help of refugees—

Right to bring proceedings for recovery of deposit—Trading with the Enemy Act 1939, s 1. **Weiner v Central Fund for German Jewry** [1941] 2 29, KBD.

TRADING WITH THE ENEMY (cont)

Performing obligation to or discharging obligation of enemy—

Guarantee by English company to another English company of debt of enemy—

Action on guarantee—Performing or discharging obligation of enemy—Transaction under which all obligations performed by plaintiff before commencement of war—Trading with the Enemy Act 1939, s 1(2)(a)(iii). **R & A Kohnstamm Ltd v Ludwig Krumm (London) Ltd** [1940] 3 84, KBD.

Guarantee by English company of debt due to neutral by German company—

Payment under guarantee—Whether payment for benefit or in discharge of obligation of enemy—Trading with the Enemy Act 1939, s 1(2)(a). **Stockholms Enskilda Bank Aktiebolag v Schering Ltd** [1941] 1 257, CA.

Transfer of chose in action by enemy—

English copyright owned by enemy—

Contract for sale of business executed in Germany on 22nd July 1939 subject to consent of German government—Consent given on 25th September 1939—Whether effective to pass English copyright—Trading with the Enemy Act 1939, s 4(1). **Novello & Co v Hinrichsen Edition Ltd** [1951] 1 779, ChD.

TRAFFIC

Road traffic. *See* **Road traffic**.

TRAFFIC LIGHTS

Collision—

Contributory negligence. *See* **Negligence** (Contributory negligence—Collision between vehicles on road—Traffic lights).

Negligence—

Duty of driver to take care. *See* **Negligence** (Duty to take care—Driver of motor vehicle—Traffic lights).

Vehicles. *See* **Negligence** (Vehicles—Traffic lights).

TRAFFIC SIGN

Erection—

Effect—

Obstruction. *See* **Highway** (Obstruction—Dual carriageway—Intersections—Highway authority extending central reservation so as to block intersections at junction of carriageway with road joining it—Erection by highway authority of 'dual carriageway sign' at junction).

Generally. *See* **Road traffic** (Traffic sign).

Siting—

Duty of Ministry. *See* **Highway** (Traffic sign—Siting—Duty of Ministry).

TRAFFIC SIGNAL

Duty to take care. *See* **Negligence** (Duty to take care—Traffic signal).

TRAILER

Road traffic. *See* **Road traffic** (Trailer).

TRAINER

Horse-racing—

Trainer's Licence. *See* **Licence** (Horse-racing—Trainer's licence).

TRAINING

Board—

Establishment of industrial training board. *See* **Industrial training** (Training board—Establishment).

Industrial training. *See* **Industrial training**.

Industrial training board—

Registration as a charity—

Control by court. *See* **Charity** (Registration—Control by the court—Control by court in exercise of its charitable jurisdiction—Statutory corporation—Industrial training board).

Maintenance— *See* **Road traffic** (Stage carriage).

TRAMCAR

Duty of conductor to take care. *See* **Negligence** (Duty to take care—Conductor of tramcar).

Stage carriage. *See* **Stage carriage, post**.

TRAMWAY

Purchase by local authority—

Purchase price—

Method of ascertaining purchase price—Total capital of company actually invested in undertaking at time of purchase—Sale by purchasers from original company—Tramways Act 1870, s 44—Great Orme Tramways Act 1898, s 57(1). **Llandudno Urban District Council v Great Orme Ry Ltd** [1948] 2 782, ChD.

Repair of road—

Liability for repair—

Extent of liability—Tramway abandoned by London Passenger Transport Board—Notice by highway authority of intention to remove tramway equipment—Fatal accident—Liability of highway authority for non-feasance—Tramways Act 1870, ss 25, 28—London Passenger Transport Act 1933, s 23(2), (5), (7). **Simon v Islington Borough Council** [1943] 1 41, CA.

Tramway operated by local authority—Tramway discontinued and lines filled in but rails not removed—Liability for repair of road as tramway authority—Tramways Act 1870, s 28. **Browne v De Luxe Car Services and Birkenhead Corp** [1941] 1 383, CA.

TRANSACTION IN SECURITIES

Tax advantage. *See* **Income tax** (Tax advantage—Transaction in securities).

TRANSCRIPT

- Admissibility in evidence—
 - Transcript of evidence given at earlier trial—
 - Admissibility in subsequent civil proceedings. *See* **Document** (Admissibility in evidence—Record as evidence of facts stated therein—Transcript of criminal proceedings).
- Cost of
 - Appeal to Court of Appeal. *See* **Costs** (Appeal to Court of Appeal—Shorthand transcript of evidence at trial—Cost of transcript).
- Cost of—
 - Legal aid. *See* **Legal aid** (Costs—Transcript).
- Court of Appeal—
 - Criminal appeal—Practice. *See* **Criminal law** (Court of Appeal—Practice—Transcript).
 - Practice. *See* **Court of Appeal** (Practice—Transcript).
- Court proceedings in relation to children—
 - Proceedings in private—
 - Practice. *See* **Child** (Practice—Court proceedings in relation to children—Proceedings in private—Publication of information—Transcripts).
- Revision—
 - Summing-up. *See* **Criminal law** (Trial—Shorthand note—Summing-up—Transcript—Revision of transcript by judge).

TRANSFER

- Abroad—
 - Transfer of assets abroad for tax avoidance. *See* **Income tax** (Avoidance—Transfer of assets abroad).
- Action—
 - Transfer between Divisions of High Court. *See* **Practice** (Transfer of proceedings between Divisions of High Court).
- Assets—
 - Settlement for tax purposes. *See* **Income tax** (Settlement—Meaning—Transfer of assets).
- Bankruptcy proceedings. *See* **Bankruptcy** (Transfer of proceedings).
- Copyright—
 - Sole rights of copyright. *See* **Copyright** (Sole rights of copyright—Transfer).
- Defence bond. *See* **Defence bond** (Transfer).
- Licence—
 - Intoxicating liquor. *See* **Licensing** (Licence—Transfer).
- Matrimonial home. *See* **Husband and wife** (Matrimonial home—Transfer).
- Order—
 - Bank—
 - Payment—Time of payment. *See* **Bank** (Payment—Time of payment—Transfer order).
- Property—
 - Husband and wife—
 - Divorce. *See* **Divorce** (Property—Adjustment order—Transfer of property).
- Registered land. *See* **Land registration** (Transfer).
- Stock—
 - Right to unpaid interest. *See* **Stock** (Transfer of stock—Rights transferred—Right to unpaid interest).
- Trial—
 - Convenient court. *See* **Criminal law** (Trial—Place of trial—Transfer to convenient court).
- Variation of settlement—
 - Ante-nuptial and post-nuptial settlement—
 - Transfers of money before and after marriage. *See* **Variation of settlement** (Ante nuptial and post nuptial settlement—Transfers of money before and after marriage).

TRANSLATION

- Evidence in criminal proceedings—
 - Translation of tape recordings. *See* **Criminal evidence** (Best evidence—Tape recordings—Translations).

TRANSMISSION MACHINERY

- Fencing of—
 - Factory in. *See* **Factory** (Dangerous parts of machinery—Duty to fence—Fencing to be kept in position while machinery in motion or use—Transmission machinery).

TRANSPORT

- Australia. *See* **Australia** (Transport).
- British Transport Commission. *See* **British Transport Commission**.
- Local authority. *See* **Local authority** (Transport).
- London Passenger Transport Board. *See* **London Passenger Transport Board**.
- London Transport Executive. *See* **London Transport Executive**.
- Public transport. *See* **Road traffic** (Public transport).
- Road transport—
 - Nationalisation—
 - Compensation to employees of transferred undertaking. *See* **British Transport Commission** (Transferred undertaking—Compensation to employee).
- Schoolchildren for—
 - Provision by local education authority. *See* **Education** (Local education authority—Provision of transport for pupils).
- Tramway. *See* **Tramway**
- Tribunal—
 - Appeal from—
 - Jurisdiction of Court of Appeal. *See* **Court of Appeal** (Jurisdiction—Appeal from order of transport tribunal).

TRANSPORT (cont)

Value added tax—

Transport of passengers—

Zero-rating. *See* **Value added tax** (Zero-rating—Transport of passengers).**TRANSPORT TRIBUNAL**

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Jurisdiction of Court of Appeal. *See* **Court of Appeal** (Jurisdiction—Appeal from order of transport tribunal).

Appeal from order—

Jurisdiction to entertain appeal—

Court of Appeal—Transport Act 1947, Sch X, para 5—Railway and Canal Commission (Abolition) Act 1949, s 8(2). **British Transport Commission v London County Council** [1953] 1 801, CA.

Appellate jurisdiction—

Public carrier's licence. *See* **Road traffic** (Goods vehicle—Public carrier's licence—Transport Tribunal—Appellate jurisdiction).

Jurisdiction—

British Transport Commission Charges Scheme. *See* **British Transport Commission** (Charges scheme—Jurisdiction of Transport Tribunal).**TRAP**

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Admission obtained by trap. *See* **Criminal evidence** (Admissions and confessions—Trap—Police).Setting engine calculated to inflict grievous bodily harm *See* **Criminal law** (Trap).**TRAPEZE ARTISTE**

Industrial injury benefit—

Right to—

Whether trapeze artiste employed under contract of service. *See* **Industrial injury** (Insurable employment—Employment under contract of service—Trapeze artiste in circus).**TRAVEL**

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Deduction from emoluments for income tax. *See* **Income tax** (Emoluments from office or employment—Expenses wholly, exclusively and necessarily incurred—Travelling expenses).Income tax. *See* **Income tax** (Deduction in computing profits—Travelling expenses).**TRAVEL CONCESSIONS**

Public transport—

Local authority. *See* **Local authority** (Transport—Travel concessions).**TRAVELLER**

Inn—

Refreshment and lodging—

Duty of innkeeper to provide. *See* **Inn** (Duty to supply refreshment and lodging to traveller).**TREASON***See* **Criminal law** (Treason).**TREASURY**Control of borrowing. *See* **Money** (Borrowing—Treasury control).Currency control. *See* **Currency Control**.**TREASURY SOLICITOR**

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Prerogative—

Power to make treaties. *See* **Crown** (Prerogative—Treaty making power).

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Direct application of treaty provisions. *See* **European Economic Community** (Treaty provisions—Direct application in member states).Extradition. *See* **Extradition** (Treaty).International convention. *See* **International law** (Convention).**TREE**

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Speeding vehicle—

Collision. *See* **Negligence** (Vehicles—Speed—Sudden and unexpected danger—Fall of tree).

Negligence—

Tree adjacent to highway. *See* **Negligence** (Duty to take care—Tree adjacent to highway).

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Injunction—

Roots causing damage. *See* **Injunction** (Nuisance—Continuing damage—Roots of tree causing damage to neighbouring premises).

TREE (cont)

Overhanging highway—

Negligence—

Duty of highway authority. *See* **Negligence** (Highway—Duty of highway authority—Tree overhanging highway).Preservation order. *See* **Town and country planning** (Trees—Preservation order).

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Nuisance. *See* **Nuisance** (Tree—Roots causing damage).**TREES**Highway. *See* **Highway** (Trees).**TRESPASS**Air space. *See* **Trespass to land** (Air space).

Conspiracy—

Indictable offence. *See* **Criminal law** (Conspiracy—Unlawful act—Tort—Agreement to do unlawful act—Trespass).Trespass to goods. *See* **Trespass to goods**.Trespass to land. *See* **Trespass to land**.**TRESPASS TO GOODS**Conversion. *See* **Conversion**.

Defence—

Involuntary accident—

Accidental damages to underground electric cable—Cable laid by plaintiff's predecessors without knowledge of owner of land—Excavation by contractors employed by owner of land—Damage caused during excavation. **National Coal Board v J E Evans & Co (Cardiff) Ltd** [1951] 2 310, CA.

Right to bring action—

Jus tertii—

No title to goods (a motor car) in either plaintiff or defendants but both purchasers of car—Car left by plaintiff for repair at garage where plaintiff had monthly credit terms—Car taken from garage by defendants—Car subsequently delivered by defendants to true owner—Whether plaintiff+ entitled to recover in trespass against defendants. **Wilson v Lombank Ltd** [1963] 1 740, Assizes.**TRESPASS TO LAND**

Air space—

Invasion of air space of another—

Advertisement sign on adjoining building projecting some eight inches into air space above one-storey shop—Right of occupier of shop to injunction requiring sign to be removed. **Kelsen v Imperial Tobacco Co (of Great Britain and Ireland) Ltd** [1957] 2 343, QBD.Injunction—Interlocutory injunction—Behaviour of the parties. **Woollerton and Wilson Ltd v Richard Costain Ltd** [1970] 1 483, ChD.

Animal—

Damage to trespasser—

Dangerous animal—Exceptions from liability. *See* **Animal** (Dangerous animal—Damage—Liability—Exceptions from liability—Trespasser).Distress damage feasant. *See* **Animal** (Distress damage feasant).Animal, by. *See* **Animal** (Trespass).Burglary. *See* **Criminal law** (Burglary—Entering a building as a trespasser).

Child trespasser—

Negligence—

Allurement. *See* **Negligence** (Children—Allurement—Child trespasser).

Conspiracy to trespass—

Indictable offence. *See* **Criminal law** (Conspiracy—Unlawful act—Tort—Agreement to do unlawful act—Trespass).

Defence—

Lawful possession—

Burden of proof—Defendant in possession—Owner proving title to land and intention to recover possession—Burden on defendant to set up title or right consistent with fact of ownership vested in plaintiff. **Portland Managements Ltd v Harte** [1976] 1 225, CA.

Leave and licence—

Adjoining buildings—Leave to underpin wall—Extension of concrete foundation beyond wall—Permission to underpin wall not authorising extension of foundations. **Willcox v Kettell** [1937] 1 222, ChD.Deserted wife in occupation of dwelling-house—Undertaking by husband, on summons for maintenance, to allow wife and children to remain in house rent free—Conveyance by husband to plaintiff—Action by plaintiff for possession—Whether wife trespasser. **Thompson v Earthy** [1951] 2 235, KBD.Husband and wife living apart—Husband occupying home not the matrimonial home—Whether wife entitled to give permission to third party to enter husband's home. **Jolliffe v Willmetts & Co** [1971] 1 478, QBD.Scope of permission—Entry into building in excess of permission—Intention to steal. *See* **Criminal law** (Burglary—Entering premises as a trespasser—Permission to enter premises—Entry in excess of permission).

Necessity—

Local authority—Homeless family—Duty of local authority to provide accommodation for homeless—Homeless family unable to obtain accommodation—Unoccupied property owned by local authority—Homeless family entering into occupation of property—Whether defence of necessity available in proceedings for possession. **London Borough of Southwark v Williams** [1971] 2 175, CA.

Distress damage feasant—

Cattle straying. *See* **Animal** (Distress damage feasant—Lien of distrainer—Cattle straying).

TRESPASS TO LAND (cont)

Duty of care to trespasser. *See Negligence* (Duty to take care—Trespasser).

Forcible entry and detainer. *See Criminal law* (Forcible entry and detainer).

Interlocutory injunction. *See Injunction* (Interlocutory—Trespass).

Ladders and planks placed against wall of adjoining owner—

Damage—

Technical trespass. **Westripp v Baldock** [1939] 1 279, CA.

Mandatory injunction. *See Injunction* (Mandatory injunction—Trespass).

Occupier—

Duty to trespasser. *See Occupier's liability* (Trespasser).

Oil—

Discharge of oil into public navigable waters—

Damage to adjoining land—Discharge of oil to lighten vessel stranded in estuary—Damage to adjoining foreshore—Necessity—Need to prove negligence. **Southport Corp'n v Esso Petroleum Co Ltd** [1954] 2 561, CA.

Possession sufficient to support trespass—

Evidence—

Inference of possession where land not used—Title temporarily vested in state—Continuance of former possession. **Wuta-Offel v Danquah** [1961] 3 596, PC.

Sea-bed—

Title shown by documents vested in plaintiff company which had purported to act as owner of tidal creek—Acts done by plaintiff company having accordingly the quality of assertions of ownership—Sufficient possession to maintain an action for trespass established. **Fowley Marine (Emsworth) Ltd v Gafford** [1968] 1 979, CA.

Tenancy agreement—

Agreement subsequently cancelled—Occupation of premises without consent of owner—Forcible ejectment by owner—Action by occupier against owner for damages for trespass—Possession not sufficient to support action against lawful owner—Law of Property Act 1925, s 40. **Delaney v Smith (T P) Ltd** [1946] 2 23, CA.

Right to maintain action—

Premises subject to Rent Restrictions Acts—

Non-occupying tenant—Licence to defendant to occupy—Defendant's occupation not such as to preserve premises for tenant's return—Tenant no longer statutory tenant—Tenant not entitled to maintain trespass against defendant—Increase of Rent and Mortgage Interest (Restrictions) Act 1920, s 15(1). **Thompson v Ward** [1953] 1 1169, CA.

Sewer—

Construction of sewer on plaintiff's land—

Oral permission by plaintiff while ignorant of his proprietary right—Permission revoked after sewer constructed—Defendants continuing to discharge effluent through plaintiff's land—Injunction—Damages. **Armstrong v Sheppard & Short Ltd** [1959] 2 651, CA.

Summary proceeding for possession of land—

Suspension of possession order. *See Land* (Summary proceedings for possession—Suspension of possession order).

TRESPASS TO THE PERSON

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Exemplary damages. *See Damages* (Exemplary damages—Trespass and assault).

Defence—

Conduct of plaintiff provoking assault by defendant—Severe blow struck, out of proportion to occasion—Plaintiff old and defendant young—Defendant convicted of unlawful wounding—Subsequent civil action—Defences of *ex turpi causa non oritur actio*, and of *volenti non fit injuria*, not sustainable. **Lane v Holloway** [1967] 3 129, CA.

Damages—

Exemplary damages. *See Damages* (Exemplary damages—Trespass to the person).

Liability of person of unsound mind—

Knowledge of nature and quality of act—No knowledge that act wrongful. **Morriss v Marsden** [1952] 1 925, QBD.

Mitigation—

Conduct of person assaulted provoking assault—Whether plaintiff's behaviour a ground for mitigation of damages for physical injury. **Lane v Holloway** [1967] 3 129, CA.

False imprisonment. *See False Imprisonment*.

Intention or negligence—

Burden of proof—

Whether necessary to prove that act intentional or negligent. **Fowler v Lanning** [1959] 1 290, QBD.

Intentional trespass—

Limitation period—

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TRESPASSER

Child—

Duty of occupier to child trespasser. *See Occupier's liability* (Child trespasser).

Occupier's duty to trespasser. *See Occupier's liability* (Trespasser).

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Admissibility of evidence already given at new trial. *See Admiralty* (Practice—Evidence—New trial—Retirement of trial judge during original trial).

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Function of judge. *See* **Judge** (Function of judge—Civil action).Practice. *See* **Practice** (Trial).Committal for trial at Crown Court. *See* **Crown Court** (Committal for trial at Crown Court).Criminal. *See* **Criminal law** (Trial).

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Committal. *See* **Crown Court** (Committal for trial at Crown Court).

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Commercial Court. *See* **Commercial Court** (Practice—Date for hearing).High Court. *See* **Practice** (Trial).

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Contempt of court. *See* **Contempt of court** (Publications concerning legal proceedings—Inaccurate report of trial).

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Factors to be considered by judge. *See* **European Economic Community** (Reference to European Court—Request for preliminary ruling concerning interpretation of treaty—Power of national court to refer question it considers necessary to enable it to give judgment—Discretionary power of judge).

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Trial by jury. *See* **Jury** (Trial by jury).

Language—

Ceylon. *See* **Ceylon** (Criminal law—Trial—Language).

Matrimonial causes—

Practice. *See* **Practice** (Matrimonial causes—Trial).Matrimonial causes. *See* **Divorce** (Practice—Trial).

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Order—

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New trial—

County court. *See* **County court** (New trial).

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Submission—

Practice. *See* **Practice** (No case to answer).Official referee, before. *See* **Practice** (Reference to referee).Right of accused to claim trial by jury for summary offence. *See* **Magistrate** (Right of accused to claim trial by jury for summary offence).

Separate trials—

Civil proceedings. *See* **Practice** (Trial—Separate trials).

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Error in estimate of length of trial—

Personal liability for costs. *See* **Solicitor** (Payment of costs by solicitor personally—Error in estimate of length of trial).Submission of no case to answer. *See* **Practice** (No case to answer).

Summary trial—

Arson. *See* **Criminal law** (Damage to property—Arson—Trial—Summary trial).Summary trial. *See* **Magistrates** (Summary trial).

Witness—

Evidence in criminal proceedings. *See* **Criminal evidence** (Trial—Witnesses).**TRIBUNAL**Agricultural Land Tribunal. *See* **Agricultural Land Tribunal**.

Appeal—

Transport tribunal. *See* **Transport tribunal** (Appeal from order).

Appeal to Divisional Court on point of law—

Jurisdiction of Divisional Court—

Decision on point of law—Jurisdiction restricted to cases when tribunal has made a decision on a point of law—Need to establish that point decided by tribunal—Tribunals and Inquiries Act 1958, s 9. *Esso Petroleum Co Ltd v Minister of Labour* [1968] 3 425, CA.

Point of law—

Exercise of a judicial discretion—Adjournment—Party absent and unrepresented—Message to tribunal explaining absence but not requesting adjournment—Determination in absence of party—Wrongful exercise of discretion—Whether point of law—RSC Ord 55, r 7(7)—Tribunal and Inquiries Act 1958, s 9(1). *Priddle v Fisher & Sons* [1968] 3 506, QBD.Finding of implied term in contract—Whether point of law. *O'Brien v Associated Fire Alarms Ltd* [1969] 1 93, CA.

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Power of statutory tribunal to amend own decision. *R v Agricultural Land Tribunal (South Eastern Area), ex parte Hooker* [1951] 2 801, KBD. *The Corchester* [1956] 3 878, Adm.

Majority decision—

Validity—Rent assessment committee—Determination of fair rent—Whether unanimous decision necessary. *Picea Holdings Ltd v London Rent Assessment Panel* [1971] 2 805, QBD.

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Domestic tribunal exceeding jurisdiction—

Remedy of person aggrieved—

Absence of malice—Liability for damage caused by ultra vires acts. **Abbott v Sullivan** [1952] 1 226, CA.

Declaration for reinstatement of person aggrieved—Whether contractual relationship necessary. **Davis v Carew-Pole** [1956] 2 524, QBD.

Evidence—

Fresh evidence discovered after hearing—

Whether certiorari lies to quash decision of tribunal. *See* **Certiorari** (Fresh evidence—Quarter sessions).

Legal rules of evidence inapplicable. *See* **Evidence** (Tribunal—Rules of evidence governing admissibility in court of law not applicable).

Immigration Appeal Tribunal—

Time limit for appealing. *See* **Immigration** (Appeal—Time limit for appealing—Appeal to tribunal from adjudicator).

Income tax—

Tax advantage—

Tribunal to consider transactions in securities. *See* **Income tax** (Tax advantage—Counteracting—Tribunal).

Income tax tribunal—

Duty to hear parties etc. *See* **Natural justice** (Income tax tribunal—Duty to hear parties etc).

Industrial Disputes Tribunal—

Certiorari to quash decision of. *See* **Certiorari** (Jurisdiction—Industrial Disputes Tribunal).

Industrial injuries tribunal—

Evidence. *See* **Natural justice** (Industrial injuries tribunal—Evidence).

Industrial tribunal. *See* **Industrial tribunal**.

Judicial discretion—

Review of exercise of discretion—

Duty of appellate court. *See* **Appeal** (Review of exercise of discretion—Duty of appellate court).

Jurisdiction—

Error going to jurisdiction—

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Lands tribunal. *See* **Lands tribunal** (Jurisdiction).

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Industrial injury. *See* **Industrial injury** (Medical appeal tribunal).

Membership—

Bias—

Inquiry into dismissal—Tribunal members also members of dismissing body—Tribunal members not present at meeting of dismissing body effecting dismissal—Local education authority staff sub-committee—Inquiry into dismissal of teacher by governing body of aided voluntary school. **Hannam v Bradford City Council** [1970] 2 690, CA.

Natural justice—

Domestic tribunal. *See* **Natural justice** (Domestic tribunal).

Precedent—

Previous decisions of statutory tribunal as precedent—

Not to inhibit examining into merits of each case in which called on to exercise statutory discretion. **Merchandise Transport Ltd v British Transport Commission** [1961] 3 495, CA.

Procedure—

Determination whether prima facie case—

No obligation to hear evidence or argument at that stage—Tribunal to consider tax advantages. *See* **Income tax** (Tax advantage—Counteracting—Tribunal—Determination whether there is a prima facie case—Procedure).

Natural justice—

Domestic tribunal. *See* **Natural justice** (Domestic tribunal).

No rules prescribed—

Comparable rules applied by analogy—Tribunal acting in accord with natural justice and bearing objectives in mind—Tribunal not disabled from performing functions. **Qureshi v Qureshi** [1971] 1 325, Div.

Procedure of inferior tribunal—

Method of challenge—Certiorari. **Wiseman v Borneman** [1967] 3 1045, CA.

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Jurisdiction of court—Extent of jurisdiction. **Lee v Showmen's Guild of Great Britain** [1952] 1 1175, CA.

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Delegation of judicial duty—

Power to delegate. **Barnard v National Dock Labour Board** [1953] 1 1113, CA, **Vine v National Dock Labour Board** [1956] 3 939, HL.

Trade union—

Domestic tribunal. *See* **Trade union** (Domestic tribunal).

TRIBUNAL (cont)

Transport tribunal—

Appeal from—

Jurisdiction of Court of Appeal. *See* **Court of Appeal** (Jurisdiction—Appeal from order of transport tribunal).Transport tribunal. *See* **Transport tribunal**.

Tribunal of inquiry—

Evidence—

Newspaper reporter—Refusal to disclose source of information of newspaper report—Whether a question which tribunal may legally require him to answer—Relevance—Privilege—Discretion of court—Tribunals of Inquiry (Evidence) Act 1921, s. 1. **Attorney-General v Clough** [1963] 1 420, QBD, **Attorney-General v Mulholland, Attorney-General v Foster** [1963] 1 767, CA.**TRICK**Larceny by a trick. *See* **Criminal law** (Larceny—Trick).**TRINIDAD AND TOBAGO**

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Appointment as acting judge of Supreme Court—Whether puisne judge and as such entitled to sit in Court of Criminal Appeal—Judicature Ordinance 1880, s. 7(1)(3)—Judicature (Amendment) Ordinance 1936 (No 24 of 1936), s. 4(1)—Criminal Appeal Ordinance 1931 (No 31 of 1931), s. 3(1)—Interpretation Ordinance 1933 (No 19 of 1933), ss. 17, 20. **Butler v R** [1939] 3 121, PC.

Constitutional law—

Freedom of association—

Abridgment of right to free collective bargaining—Abridgment of freedom to strike—Freedom of association not violated—Industrial Stabilisation Act 1965 (No 8 of 1965)—Trinidad and Tobago (Constitution) Order in Council 1962 (S.I. 1962 No 1875), Sch. 2, s. 1(i). **Collymore v Attorney-General of Trinidad and Tobago** [1969] 2 1207, PC.

Income tax—

Dividend paid by cancellation of credit due to company from foreign company—

Liability of company to tax as statutory agent of foreign company—'Transmission' of revenue—Income Tax Ordinance 1940, ss. 5, 30. **The Trinidad Lake Asphalt Operating Co Ltd v Income Tax Comrs for the Colony of Trinidad and Tobago** [1945] 1 9, PC.

Master and servant—

Trade dispute—

Board of inquiry—Jurisdiction—Dismissal of workmen by employers—Non-recognition of union by employers—Power of governor to appoint board of inquiry—Trade Disputes (Arbitration and Inquiry) Ordinance (Laws of Trinidad and Tobago 1950 (c. 22 No 10)), ss. 2(1), 8(1). **Beetham v Trinidad Cement Ltd** [1960] 1 274, PC.

Statute—

Construction—

Power to arrest without warrant a person having in his possession 'in any place' articles reasonably suspected of being stolen—Search warrant obtained on suspicion of certain articles being in respondent's possession at his home—Those articles not found there, but other articles seized—Whether words 'in any place' meant in any public place—Whether Judicial Committee should remit case to appellate court, magistrate having found no reasonable cause for suspicion but appellate court having decided appeal on another ground—Summary Offences Ordinance s. 36(1). **Feliz v Thomas** [1966] 3 21, PC.**TROUT***See* **Fish** (Salmon and trout).**TROVER**

Limitation of action—

Date of accrual of cause of action—

Car stolen by unknown person—Discovery in hands of innocent purchaser for value—Action for recovery brought seven years after theft. **R B Policies at Lloyd's v Butler** [1949] 2 226, KBD.

Postponement of limitation period—

Action based on fraud—Whether 'right of action concealed by fraud'. **Beaman v ARTS Ltd** [1949] 1 465, CA.

Right of possession—

Finder—

Brooch found in requisitioned house—Freeholder never in physical occupation of house—True owner of brooch not known—Finder entitled to retain brooch. **Hannah v Peel** [1945] 2 288, KBD.**TRUCK ACTS**

Wages—

Payment in current coin. *See* **Master and servant** (Remuneration—Artificer—Payment otherwise than in current coin of realm).**TRUNK ROADS***See* **Highway** (Trunk roads).**TRUST—**Discretion of trustees. *See* **Variation of trusts** (Extension of powers of investment—Discretion).**TRUST AND TRUSTEE**Accounting for benefit. *See* **Profit from trust**—Account of profits—Agents for trust, *post*.

TRUST AND TRUSTEE (cont)

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Audit—

Judicial trustee. *See* Judicial trustee—Power of compromise—Audit of accounts, *post*.Accumulation of income. *See* Accumulation.

Additional trustee—

Appointment—

Appointment by appointor of himself—Trustee Act 1925, s 36(6). *Re Power's Settlement Trusts* [1951] 2 513, CA.

Administration of trust—

Annuity fund—

Annuity never payable—Capital of fund payable to legatee—Appropriation of investments to satisfy legacy—Discretion of trustees. *Re Nicholson's Will Trusts* [1936] 3 832, ChD.

Child-bearing—

Leave to administer trusts on footing that married woman past child-bearing—Married woman entitled to protected life interest—Thrice married and having had two children by first marriage, but none for 27 years—Medical evidence of incapacity to have further children. *Re Westminster Bank Ltd's Declaration of Trust* [1963] 2 400, ChD.Woman over 70 *See* Variation of trusts (Child bearing—Arrangement proposed to meet contingency of a woman over 70 having a further child).

Disposal of surplus on closure of fund—

Fund raised by employees of company—Fund to provide grants for ex-employees in the Forces and for contributors in respect of air-raid damage—Non-charitable purposes—Fund to be distributed amongst contributors in proportion to amount contributed—Amounts received by way of grant to be brought into hotchpot. *Re Trusts of Hobourn Aero Components Ltd's Air-Raid Distress Fund* [1945] 2 711, ChD.Rule in *Howe v Dartmouth*—Leaseholds—Beneficial interests in undivided shares—Statutory trust for sale—Law of Property Act 1925, ss 25, 28(2), 34, 35. *Re Berton* [1938] 4 286, ChD.

Advancement—

Power of advancement. *See* Powers of trustee—Advancement, *post*.

Agent—

Accountability of solicitor as agent for trust. *See* Profit from trust—Account of profits—Agents for trust, *post*.

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Rule in. *See* Rule in Allhusen v Whittell, *post*.

Annuity—

Annuity to trustee conditional on his acting as such—

Assessment to special contribution. *Dale v Inland Revenue Comrs* [1953] 2 671, HL.

Appointing person to convey property—

Infant beneficially interested—

Disentailing deed—Trustee Act 1925, s 53. *Re Bristol's Settled Estates* [1964] 3 939, ChD, *Re Lansdowne's Will Trusts* [1967] 1 888, ChD.

Appointment—

Judicial trustee—

Power to appoint. *See* Judicial trustee—Power to appoint, *post*.

Appointment of new trustee—

By administrators with the will annexed—

Administration completed. *Re Cockburn (decd)* [1957] 2 522, ChD.

By court—

Former trustee wishing to continue in office—Friction between trustees—Appointment of Public Trustee—Jurisdiction—Trustee Act 1925, s 41(1). *Re Henderson* [1940] 3 295, ChD.

By infant—

Appointment of mother of infant as sole trustee—Mother also interested in fund—Validity of appointment. *Re Parsons' Settlement* [1940] 4 65, ChD.

By personal representative of last surviving trustee—

Need for grant of representation—Executor not having obtained probate—New trustee bringing proceedings in court—Whether executor having power to appoint trustee in absence of grant of probate—Whether title of executor to make appointment may be proved otherwise than by a proper grant of representation—Trustee Act 1925, s 36(1). *Re Crowhurst Park* [1974] 1 991, ChD.

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Refusal to concur—Enforcement by beneficiaries of concurrence—Trustee Act 1925, s 36(1) (b). *Re Brockbank (decd)* [1948] 1 287, ChD.Retiring trustee—Trustee compulsorily retired for remaining out of the United Kingdom for more than twelve months—Trustee Act 1925, s 36(1) (8). *Re Stoneham's Settlement Trusts* [1952] 2 694, ChD.

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Appointment in place of person of unsound mind. *Practice Direction* [1957] 1 581, Ct of Protection.Vesting order in some of several trustees without removal of other trustee. *See* Vesting order—Continuing trustees—Necessity for removal of remaining trustees, *post*.

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Rights of beneficiaries—Trust moneys forming part of deceased's estate paid into trustee's (his widow's) own bank account—Overdraft facilities accorded by bank to widow for property dealings—Liabilities of deceased's estate met by widow out of her own moneys—Whether beneficiary in deceased's estate entitled to a share of the profit from widow's property dealings. *Re Tilley's Will Trusts* [1967] 2 303, ChD.

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Liability for anticipated breach—Trustee of deceased's estate—Deceased having specifically devised house to B—Trustee having transferred house to B without having taken security for estate duty in respect of house—Amount of duty irrecoverable from B—Proposal to pay duty out of residue of estate—Payment in breach of trust—Whether trustee entitled to seek relief in respect of anticipated breach—Trustee Act 1925, s 61. *Re Rosenthal (decd)* [1972] 3 552, ChD.Procedure by originating summons inappropriate. *See Procedure—Originating summons or writ, post.*

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- Trustees surrendering their discretion to the court. *See* Powers of trustee—Compromise—
- Trustees surrendering their discretion to the court, *post*.

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- Exercise of special power of appointment—
- When trusts so appointed became constituted. *Re Batty (decd)* [1952] 1 425, ChD, *Re Bransbury's Will Trusts* [1954] 1 605, ChD.

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- Business and lease bequeathed to executors beneficially—
- New lease granted to one executor—Business carried on by one executor—Form of account to be taken—Laches. *Re Jarvis (decd)* [1958] 2 336, ChD.
- Cheque fraudulently drawn by executor on executor's account—
- Recovery from payee—Cheque taken for value and in good faith—Constructive notice of want of authority. *Nelson v Larholt* [1947] 2 751, KBD.
- Contract to divide a company's land between shareholders—
- Memorandum—Minutes of company meeting sufficient memorandum—Law of Property Act 1925, s 53(1)(a). *Re Strathblaine Estates Ltd* [1948] 1 162, ChD.

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- Family arrangement—Equitable principle applicable—Imposition of trust whenever justice and good conscience require it—Improvement to property paid for by person other than legal owner—Mother-in-law coming to live at son-in-law's house—Extension to house to provide bedroom for mother-in-law—Extension paid for by mother-in-law—Mother-in-law subsequently leaving to live elsewhere—Resulting trust for mother-in-law giving her an interest in the house proportionate to money expended on extension—Resulting trust consistent with transaction being a loan to son-in-law. *Hussey v Palmer* [1972] 3 744, CA.

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- Trust for reform of alphabet—Whether effect could be given to directions of trust as empowering trustee to act on them. *Re Shaw (decd)* [1958] 1 245, CA.

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- Money placed in names of donor and another—Investment in joint names—Gifts not to take effect until death of donor—Whether gifts of testamentary nature not conforming with Wills Act 1837. *Young v Sealey* [1949] 1 92, ChD.

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- Contractual licence—Sale of licensor's interest—Rights of licensee against third party. *See* Licence (Licence to occupy land—Contractual licence—Rights of licensee against third parties—Constructive trust).

Oral arrangements—

- Exchange of shares owned by life tenant for reversionary interest in settled shares—Oral agreement to transfer reversionary interest (by exchange) to life tenant—Whether any need for writing—Law of Property Act 1925, s 53(1)(2). *Oughtred v Inland Revenue Comrs* [1959] 3 623, HL.
- Sale of cottage—Oral undertaking by purchaser to permit vendor to occupy cottage rent free. *Bannister v Bannister* [1948] 2 133, CA.
- Voluntary transfer of legal estate—Oral arrangement that transferor would remain beneficial owner—Beneficial owner not intending gift—Transfer of house by registered proprietor—Whether absence of writing precluding transferor from asserting entitlement in equity—Whether expression of intention in oral agreement negating resulting trust—Whether transferor prevented from asserting beneficial interest as overriding interest—Law of Property Act 1925, s 53(1)(2). *Hodgson v Marks* [1971] 2 684, CA.

Participation in dishonest design—

- Takeover transaction involving purchase by director of company's issued share capital—Director using company's assets to finance purchase of shares—Director drawing cheque on company's account in favour of third party to repay loan by third party for purchase of shares—Payment of cheque by bank—Liability of bank to company as constructive trustee—Circumstances such as to put reasonable banker on enquiry as to propriety of transaction. *Karak Rubber Co Ltd v Burden (No 2)* [1972] 1 1210, ChD.

Purchase of house as home—

- Family enterprise—Equality is equity. *Macdonald v Macdonald* [1957] 2 690, ChD.

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- Article of association providing for automatic transmission of shares to director's widow on his death—Article invalid as contrary to Companies Act 1929. *Re Greene (decd)* [1949] 1 167, ChD.

- Transfer by company in liquidation of shares in another company—Allegation that company in liquidation received shares subject to trust—No claim made that company constructive trustee—Whether liquidator having constructive knowledge of trust. *Competitive Insurance Co Ltd v Davies Investments Ltd* [1975] 3 254, ChD.

Tenancy agreement—

- Contribution to rent—Informal arrangement between plaintiffs and defendant to share unfurnished flat—Flat let to defendants for a year under tenancy agreement—No premium—Draft agreement approved by plaintiffs—Plaintiffs and defendant contributing to rent, purchase of furniture and other expenses—No express agreement in relation to beneficial ownership of tenancy—Whether defendant trustee of tenancy for himself and plaintiffs. *Savage v Dunningham* [1973] 3 429, ChD.

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Sole United Kingdom agent of German manufacturer registered owner of mark—Whether held mark in trust for manufacturer. *Re Diehl K G's Application* [1969] 3 338, ChD.

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Contributions by woman to joint home—House in name of man—Death of man intestate—Rights of woman—Joint venture—'Equity is equality'. *Diwell v Farnes* [1959] 2 379, CA.

Contributions to acquisition of property—Contributions to household expenses—Contribution to deposit on house—Man and mistress living in rented accommodation—Mistress paying housekeeping expenses and man paying other outgoings—House acquired on mortgage—Mistress contributing by way of loan to balance of purchase price—House conveyed to man—Mistress continuing to meet housekeeping expenses—Man paying mortgage instalments and other outgoings—Whether mistress entitled to beneficial interest in house. *Richards v Dove* [1974] 1 888, CA.

House acquired by joint efforts for joint benefit—Principles governing apportionment of beneficial interests—Relevance of principles governing rights of husband and wife in matrimonial home—Land acquired by man in his name for purpose of building bungalow for himself and his mistress to set up home together—Mistress not contributing to purchase price of land—Mistress helping in physical work of building bungalow and contributing to mortgage instalments and other expenses—Couple separating before going into occupation—Man occupying bungalow alone for two years rent free paying the mortgage instalments over that period—Sale of property—Man holding proceeds as trustee for himself and mistress—Share of proceeds of sale to which mistress entitled. *Cooke v Head* [1972] 2 38, CA.

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Unmarried couple—

Transfer of property acquired by both into name of one party—Declaration of trust by transferee—Declaration supported by agreement or estoppel—Inference of agreement from parties' conduct—Contributions to repair and restoration of house—House transferred into man's name—Mistress making no contribution to purchase price—Man telling mistress that house belonged to them both but that mistress too young to join in transfer—Couple intending to marry—Mistress helping to improve and repair house by heavy physical work—Couple subsequently separating—Whether mistress entitled to beneficial interest in house. *Eves v Eves* [1975] 3 768, CA.

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Carrying intermediate income—

No payment to be made to beneficiary—Beneficiary entitled to payment under statute—Trustee Act 1925, s 31(1)(ii). *Re Ricarde-Seaver's Will Trusts* [1936] 1 580, ChD.

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Statutory provision for payment to beneficiary—Whether subject to contrary direction in will—Trustee Act 1925, ss 31, 69(2). *Re Turner's Will Trusts* [1936] 2 1435, CA.

Statutory provision for payment to beneficiary—Whether subject to contrary direction in will—Trustee Act 1925, ss 31, 69(2). *Re Turner's Will Trusts* [1936] 2 1435, CA.

Vesting—

Share of residue to be divided, after life interests, among such of named charities as were in existence as independent charities—Three named charities became subject to National Health Service Act 1946, during the subsistence of the life interests—Whether a charity's interest was a vested remainder subject to a condition subsequent divesting it before it vested in possession or whether it was a contingent gift in remainder. *Re Lowry's Will Trusts* [1966] 3 955, ChD.

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Widow's annuity—Whether trust. *See* Contract (Stranger to contract—Annuitant—Widow of deceased owner of business—Sale of business by deceased on terms under which widow was to be paid weekly sum).

Corporate trustee—

Friendly society—

Appointment as sole trustee of pension fund—Friendly Societies Act 1896, s 25(1) (3). *Re Pilkington Bros Ltd Workmen's Pension Fund* [1953] 2 816, ChD.

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Land conveyed to corporation sole and others as school site—Resulting trust on closure of school. *Banks v Salisbury Diocesan Council of Education Incorporated* [1960] 2 372, ChD.

Costs—

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Creation of trust (cont)—

Disposition of sum of money to individual recipient—

Acceptance of trusts by him possibly subsequently to receipt of money—Instructions of donor communicated by letter—Gift for benefit of donor's friend during her lifetime at discretion of recipient of money—Residue applicable as to part for recipient of money and as to remainder on charitable trusts—Memorandum of recipient after donor's death recording wishes of donor—Whether memorandum admissible in evidence—Whether trust in favour of recipient of money established—Whether charitable trust of balance established—Evidence Act 1938, s 1—Law of Property Act 1925, s 53. **Re Tyler's Fund Trusts** [1967] 3 389, ChD.

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Company—Moneys paid by customers in advance for goods—Oral arrangement made by company to place moneys in special bank account—Arrangement made on professional advice—Purpose to protect customers in view of possible insolvency of company—Whether sufficient manifestation of intention to create trust in favour of customers. **Re Kayford Ltd** [1975] 1 604, ChD.

Purpose trust—

Benefit to individuals—Sports ground for employees of company—Trustees empowered to allow other persons to use sports ground—Uncertainty—Condition that if less than 75 per cent of employees were subscribing (at rate of 2d weekly per man) land should be conveyed to hospital—Women and juniors subscribing 1d weekly—Validity of trust and of gift over—Whether reference to man's subscribing rate included woman's—Law of Property Act 1925, s 61(d). **Re Denley's Trust Deed** [1968] 3 65, ChD.

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Transfer by way of declaration of new trust and determination of subsisting equitable interest—

Personalty—Whether a 'disposition' for which writing needed—Law of Property Act 1925, s 53(1)(c). **Gray v Inland Revenue Comrs** [1959] 3 603, HL.

Defaulting trustee—

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Delegation by trustee during absence abroad—

Statutory declaration to be filed with each power of attorney—Trustee Act 1925, s 25(4). **Practice Direction** [1960] 1 716, QBD.

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Deliberations as to exercise of discretionary power—Whether duty extends to documents relating to trustees' deliberations—What documents in that connection are not trust documents. **Re Londonderry's Settlement** [1964] 3 855, CA.

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Exercise of trust—Trustees directed 'to pay or apply' income of trust fund during specified period to or for 'the support or benefit of all or any one or more' of a named class of persons—Corpus to be divided at end of specified period—Beneficiaries of discretionary trust having only contingent interest in corpus—Allocations of income in favour of infant beneficiaries—Resolution of trustees that sums 'shall belong' to each of the infant beneficiaries—Sums allocated to infants not being required for their maintenance, resolution to accumulate—Trustee Act 1925, s 31(2). **Re Vestey's Settlement** [1950] 2 891, CA.

Class of beneficiaries including employees and dependants—

Impracticability of ascertaining all members of class of possible beneficiaries—Whether term 'dependants' too vague—Whether trust void for uncertainty. **Re Saxone Shoe Co Ltd's Trust Deed, Re Abbott's Will Trusts** [1962] 2 904, ChD.

Class of beneficiaries including employees and relatives—

Power or imperative trust—Imperative direction that trustees 'shall apply' net income of fund—Whether deed created a valid power or a trust that would be void for uncertainty. **McPhail v Doneton** [1970] 2 228, HL.

Test of validity—Whether test same for a trust as for a power—Whether class including 'relatives and dependants' void for uncertainty. **Re Baden's Trusts (No 2)** [1972] 2 1304, CA.

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Date of ascertainment of class—Whether trust valid. **Re Hain's Settlement** [1961] 1 818, CA.

Class of beneficiaries unascertainable—

Barepower of selection not coupled with trust—Settlement containing discretionary trusts in favour of specified class of beneficiaries—Power of trustees with written consent of settlor to include 'any other person or persons except the settlor' in the specified class—Whether power void for uncertainty. **Blausten v Inland Revenue Comrs** [1972] 1 41, CA.

Certain members of class ascertainable—Invalidity of trust. **Inland Revenue Comrs v Broadway Cottages Trust** [1954] 3 120, CA.

Individual members ascertainable—Whether sufficient to show individual fell within class—Trust to benefit employees and ex-employees of company. **Re Sayer Trust** [1956] 3 600, ChD.

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Discretion to make payment to such children as 'shall appear to be most in need'—Discretionary power to divide the corpus—Time when such power may be exercised—Construction against intestacy. **Magee v Magee** [1936] 3 15, PC.

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Discretionary trust (cont)—

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Income given on trust to apply it for education or benefit in such manner as trustee should think fit for benefit of children of testator's four children—Subject thereto widow to have the benefit of the income—Whether trustee had discretion as to amount of income to be applied for a grandchild or the grandchildren—Whether gift to widow was to be rejected as repugnant. **Re Ward's Will Trusts** [1964] 3 442, ChD.

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Object's release of interests under settlement for valuable consideration—Effect of release on trustees' discretion—Whether competent to trustees to exercise discretion in favour of object. **Re Gulbenkian's Settlement Trusts (No 2)** [1969] 2 1173, ChD.

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Exercise of trust—Trustees directed 'to pay or apply' income of trust fund during specified period to or for 'the support or benefit of all or any one or more' of a named class of persons—Corpus to be divided at end of specified period—Beneficiaries of discretionary trust having only contingent interest in corpus—Allocations of income in favour of infant beneficiaries—Resolution of trustees that sums 'shall belong' to or be divided among each of the infant beneficiaries—Sums allocated to infants not being required for their maintenance, resolution to accumulate—Trustee Act 1925, s 31(2). **Re Vestey's Settlement** [1950] 2 891, CA.

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Power to hand over capital—Discretion to trustees to 'resort to and spend' any part of capital of trust fund 'and apply the same for the beneficiaries maintenance and general benefit during his life or until the cesser of his interest'—Protected life interest—Capital of fund to fall into residue on death of beneficiary or on forfeiture—Trustees' power to hand over capital absolutely to beneficiary. **Re Powles (decd)** [1954] 1 516, ChD.

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Principal beneficiary an enemy—Forfeiture of interest of principal beneficiary—Trustee Act 1925, s 33—Trading with the Enemy Act 1939, s 7—Trading with the Enemy (Custodian) Order 1939 (S R & O 1939 No 1189). **Re Gourju** [1942] 2 605, ChD.

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Gift of residue on trust for a class of persons difficult to ascertain—Beneficiaries, and amount of their shares, in discretion of trustees—Whether trust valid. **Re Eden (decd)** [1957] 2 430, ChD.

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Power of selection—Bare power not coupled with duty to select—Class of beneficiaries including persons considered to have moral claim on deceased—Impracticability of ascertaining beneficiaries—Power exercisable on several occasions and thus possibly beyond perpetuity limit—Whether void for uncertainty or perpetuity—Trust of proceeds of endowment assurance under pension scheme—Whether resulting trust for deceased. **Re Leek (decd)** [1967] 2 1160, ChD.

Purposes—Specified period—Application of income of trust funds to be applied during specified period for all or any of certain public, but non-charitable, purposes—Application in discretion of trustees, subject to directions of settlors—Person entitled to fund at end of specified period not at present ascertainable. **Re Astor's Settlement Trusts** [1952] 1 1067, ChD.

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Beneficiary absolutely entitled—

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Duty of trustee (cont)—

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Duty to inform beneficiary of his benefits under trust instrument—Duty to disclose to beneficiary on demand documents relating to the trust—Duty to pay income and capital without demand by beneficiary. **Hawksley v May** [1955] 3 353, QBD.

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Trustee a director of development company—Trustees agreeing to take leases from company about to become a subsidiary of development company. **Lindgren v L & P Estates Co Ltd** [1968] 1 917, CA.

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Corporate trustee—Bank—Right to withhold documents relating to estate from successors in office. **Tiger v Barclays Bank Ltd** [1952] 1 85, CA.

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Overriding duty to obtain best price—Negotiations in advanced stage—Higher purchase price offered by third party. **Buttle v Saunders** [1950] 2 193, ChD.

Expenditure on property of another—

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Fraudulent payment to innocent third party—

Value not given by third party—Whether beneficiary can recover from third party. **G L Baker Ltd v Medway Building and Supplies Ltd** [1958] 3 540, CA.

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Money paid to charitable institutions by executors under a mistake as to the construction of a will—Directions in will void for uncertainty—Right of those entitled under an intestacy to trace. **Ministry of Health v Simpson** [1950] 2 1137, HL.

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Order brought forfeiture clause in pension trust into operation—Discretionary trust arising for benefit of husband, wife and others—Consequences of order in relation to payments by the trustees in the exercise of their discretion—Maintenance Orders Act 1958, s 6(1)(b). **Edmonds v Edmonds** [1965] 1 379, Div.

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Gifts to 'my trustees absolutely they well knowing my wishes concerning the same'—Gift of estate on trust and not gift conditional on discharge of testator's wishes. **Re Rees' Will Trusts** [1949] 2 1003, CA.

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Chartered corporation—Whether limited to trustee investments. *See* **Charity** (Chartered corporation—Investments).

Description—

Direction to invest in stocks, shares, and/or convertible debentures in the 'blue chip' category—Uncertainty—Whether clause valid. *Re Kolb's Will Trusts* [1961] 3 811, ChD.

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'South African trustee securities only'—Whether investments confined to such South African securities as were trustee investments by the law of England. *Re Sebba (decd)* [1958] 3 393, ChD.

Statutory power—Whether statutory power available to trustee—Trustee Act 1893, s 1—Trustee Act 1925, ss 1(1), 69(2). *Re Warren* [1939] 2 599, ChD.

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Limitation of powers—

Best interest of beneficiary—Power to invest 'in any shares stocks property or property holding company as the trustees in their discretion shall consider to be in the best interest' of the beneficiary—Whether trustees' power of investment unlimited. *Re Peczenik's Settlement* [1964] 2 339, ChD.

Guaranteed stocks—'In or upon any stocks...guaranteed by the Government of the United Kingdom or of any British Colony or Dependency...but not otherwise'—Investments in Dominion stocks and stock of local authority—Whether authorised—Trustee Act 1925, ss 1, 69(2). *Re Rider's Will Trusts* [1958] 3 135, ChD.

In or upon such investments as to trustees 'may seem fit'. *Re Harari's Settlement Trusts* [1949] 1 430, ChD.

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Power of beneficiary to direct investments whether authorised or not—

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House—Whether empowered to purchase freehold house as home for widow and children. *Re Power's Will Trusts* [1947] 2 282, ChD.

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On such securities as they think fit—Power to invest in stocks and shares. *Re Douglas's Will Trusts* [1959] 3 785, CA.

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Audit of accounts—Extent of auditor's duty—Sending of copy of accounts to beneficiaries—Judicial Trustees Act 1896, s 1(1)—Trustee Act 1925, s 15(f)—Judicial Trustee Rules 1897, rr 12(1), 15(2). *Re Ridsdel* [1947] 2 312, ChD.

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Part of property—Whether available in respect of a part of the property of a testatrix—Factors in deciding whether to exercise power—Dispute in regard to part only of the estate—Conflict of duty and interest in position of executors—Testatrix directed extension of a lease of freehold property to her sons, the executors, on advantageous terms—Reversion devised to daughters—Sons were solicitors and had drawn the lease—Whether executors were under duty to impeach lease—Judicial Trustees Act 1896, s 1(2). *Re Wells (decd)* [1967] 3 908, ChD.

Power of court to appoint judicial trustee for purposes of Settled Land Act—Judicial Trustees Act 1896, s 1(1)—Settled Land Act 1925, ss 23, 30. *Re Marshall's Will Trusts* [1945] 1 550, ChD.

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Application of moneys advanced—Duty of beneficiary to apply money advanced for a particular purpose—Duty of trustee not to pay money advanced for particular purpose to a beneficiary believed or shown to be irresponsible. **Re Pauling's Settlement Trusts** [1963] 3 1, CA.

Charitable donation—Benefit of beneficiary—Discharge by wealthy person of moral obligation to make donation to charity. **Re Clore's Settlement Trusts** [1966] 2 272, ChD.

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Payment to beneficiary—Money not required for specific purpose—Trustee Act 1925, s 32(1). **Re Moxon's Will Trusts** [1958] 1 386, ChD.

Power to 'raise' any part and to pay or 'apply' the same for the benefit of any child—Exercise of power by creating new settlement for children—Validity. **Re Wills' Will Trusts** [1958] 2 472, ChD.

Proposed advancement by conveyance of land—Avoidance of incidence of estate duty—Whether trustees could convey land to beneficiary in exercise of power conferred by Trustee Act 1925, s 32. **Re Collard's Will Trusts** [1961] 1 821, ChD.

Proposed exercise partly with a view to lessening the incidence of death duty on the death of the life tenant—Whether new voluntary settlements to be approved by trustees a valid exercise of power of advancement—Trustee Act 1925, s 32. **Re Ropner's Settlement Trusts** [1956] 3 332, ChD.

Special power—Trustee Act 1925, s 32(1). **Pilkington v Inland Revenue Comrs** [1962] 3 622, HL.

Trusts arising on exercise of special power of appointment—Power conferred by testamentary instrument—Death of testator before 1st January 1926—Power exercised after 1st January 1926—Whether statutory power of advancement applicable—Trustee Act 1925, s 32(3). **Re Batty (decd)** [1952] 1 425, ChD, **Re Bransbury's Will Trusts** [1954] 1 605, ChD.

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Exclusion by trust for accumulation—Trustee Act 1925, ss 32(1), 69(2). **Inland Revenue Comrs v Bernstein** [1961] 1 320, CA.

Exclusion by trust for accumulation—Trust after settlor's death as to one-third for children and as to two-thirds for widow—Children's interests not prior interests—Trustee Act 1925, ss 32(1), s 69(2). **Inland Revenue Comrs v Bernstein** [1961] 1 320, CA.

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Property purchased from trust estate while testatrix a trustee—Conveyance avoided by beneficiaries after death of testatrix—Right of specific devisee to repaid purchase money. **Re Sherman (decd)** [1954] 1 893, ChD.

Take-over transaction involving use of company's moneys for the acquisition of its shares on the take-over—Elements requisite to establish liability as if participant were a trustee—Liability as constructive trustee based on reasonable inference from known facts and on alleged failure to make enquiry—Novation of debt created by loan of company's moneys—Whether extending to liability of borrower as constructive trustee. **Selangor United Rubber Estates Ltd v Cradock (a bankrupt) (No 3)** [1968] 2 1073, ChD.

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Express trust—Trust in will to sell and divide proceeds among beneficiaries—Nature of beneficiaries' interests—Tenants in common of proceeds of sale—No interest in realty. **Barclay v Barclay** [1970] 2 676, CA.

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Permission to reside in house—Permission for tenant for life of residue, given on trust for sale with power to postpone sale, to reside in testatrix' house—Option for plaintiff to take house after life tenant's death in part settlement of his reversionary share of residue—Whether immediate binding trust for sale created or whether house settled land—Whether trustees of will might sell house without prior consent of plaintiff—Law of Property Act 1925, s 205(1)(xxix). **Re Herklots' Will Trusts** [1964] 2 66, ChD.

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How discretion of court to order sale exercised—Law of Property Act 1925, s 30. **Re Mayo** [1943] 2 440, ChD.

Husband and wife—Matrimonial home purchased jointly out of money provided equally by them—Husband and wife divorced—Law of Property Act 1925, s 30—Distinction of position on application under Married Women's Property Act 1882, s 17. **Jones v Challenger** [1960] 1 785, CA.

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Cost paid out of income—Whether recouped to life tenants out of capital—Law of Property Act 1925, s 28—Settled Land Act 1925, ss 73, 84—Agricultural Holdings Act 1948, s 81(1). **Re Wynn (decd)** [1955] 2 865, ChD.

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Power to apply proceeds in purchase of realty—Law of Property Act 1925, s 28(1) (as amended by Law of Property (Amendment) Act 1926, s 7, Sch)—Settled Land Act 1925, s 73(1). **Re Wellsted's Will Trusts** [1949] 1 577, CA.

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Vesting order—Person interested—Receiver of trustee's interest appointed by way of equitable execution—Equitable interest in land—Law of Property Act 1925, ss 30, 195(1), 205(x). **Re No 39 Carr Lane, Acomb** [1953] 1 699, ChD.

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Counsel's fees—Supreme Court Costs Rules 1959, r 31. **Re Whiteley (decd)** [1962] 3 45, ChD.

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Security—Retention of trust fund by way of security for indemnity thereout of costs awardable on pending appeal as ground for postponing appointment of new trustees. **Re Pauling's Settlement** [1963] 1 857, ChD.

Legal aid. *See* **Legal aid** (Costs—Trustee's costs).Liability for future claim to estate duty. *See* **Appointment of new trustee**—Objection—Costs—

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Action by beneficiaries against trustee—Taxation as between solicitor and client—Disbursements from trust fund in excess of amount of taxed costs—Right of trustee to recoup himself out of trust fund. **Re Dargie (decd)** [1953] 2 577, ChD.

Contractual right—Breach of trust—Action dismissed—Severance of defence by trustees—Whether entitled to two sets of costs—Legally aided plaintiffs—Trust fund insufficient. **Re Spurling's Will Trusts** [1966] 1 745, ChD.

Settlement set aside for undue influence. **Bullock v Lloyds Bank Ltd** [1954] 3 726, ChD.

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Retention of unemployment book by former employer—

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UNFAIR DISMISSAL

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Dismissal in consequence of pressure exercised on employer—

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Age limit—Normal retiring age or specified birthday—Right to compensation for prospective loss of wages after specified birthday—Woman employee dismissed when aged 59—Award made and compensation assessed to cover loss of wages after age of 60—Whether compensation should be limited to loss of pay up to age of 60—Trade Union and Labour Relations Act 1974, Sch 1, para 10(b). *Barrel Plating & Phosphating Co Ltd v Danks* [1976] 3 652, EAT.

UNFAIR DISMISSAL (cont)

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Heads of loss—

Duty of tribunal—Reasons for award—Duty to specify in detail amounts awarded under each head and matters considered. **Adda International Ltd v Curcio** [1976] 3 620, EAT.

Immediate loss of wages—

Unemployment benefit—Benefit received by employee following dismissal—Whether unemployment benefit one of the circumstances which the tribunal is entitled to take into account in assessing compensation. **Adda International Ltd v Curcio** [1976] 3 620, EAT.

Loss of accrued right to redundancy payment—

Employer rebutting presumption of redundancy for purposes of redundancy payment—Employer failing to show that reason for dismissal justified—Award of compensation to reflect loss of accrued rights to redundancy payment. **Midland Foot Comfort Centre Ltd v Richmond** [1973] 2 294, NIRC.

Loss sustained by aggrieved party—

Earnings from new employment—Dismissal without notice—Payment of salary for due period of notice in lieu of notice—Employee obtaining other employment during due period of notice—Whether earnings from new employer during due period of notice to be taken into account in assessing compensation—Industrial Relations Act 1971, s 116(1). **Everwear Candlewick Ltd v Isaac** [1974] 3 24, NIRC.

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Matters to which complaint relates—Conduct of employee having caused dismissal—Conduct of employee not having contributed to unfair character of dismissal—Matters to which complaint relates' not restricted to unfair character of dismissal—All circumstances surrounding dismissal to be taken into account—Whether employers entitled to reduction in award in consequence of employee's conduct—Industrial Relations Act 1971, s 116(3). **Maris v Rotherham Corp** [1974] 2 776, NIRC.

No award of compensation on ground that employee's act was sole cause of dismissal—Employee refusing to pay union arrears—Threat of strike action by employee's fellow workers if arrears not paid—Employee dismissed because of threat—Whether employee's failure to pay union arrears sole cause of dismissal—Industrial Relations Act 1971, s 116(3). **Morris v Gestetner Ltd** [1973] 3 1168, NIRC.

Reduction of award on ground that employee 'caused or contributed to' his dismissal—Employee dismissed for refusing to be a party to the falsification of employers' records—Employee refusing to accept reassurance by employers' manager—Whether just and equitable for tribunal to reduce assessment—Whether dismissal caused or contributed to by employee—Whether words 'caused or contributed' implying blameworthiness—Industrial Relations Act 1971, s 116(3). **Morrish v Henlys (Folkestone) Ltd** [1973] 2 137, NIRC.

Redundancy payment—

Award of compensation in addition to redundancy payment—Redundancy a reason justifying dismissal—Presumption of redundancy for purposes of redundancy payment—Onus of employer to show redundancy as a reason justifying dismissal—Circumstances in which tribunal competent to award both compensation for unfair dismissal and redundancy payment—Redundancy Payments Act 1965, s 9(2)(b)—Industrial Relations Act 1971, s 24(1)(2)(6). **Midland Foot Comfort Centre Ltd v Richmond** [1973] 3 294, NIRC.

Employee receiving redundancy payment from employers—Employee subsequently claiming compensation for unfair dismissal—Tribunal awarding employee compensation without making appropriate deduction for redundancy payment—Whether tribunal bound to make deduction for redundancy payment when assessing employee's loss—Industrial Relations Act 1971, s 116. **Yorkshire Engineering and Welding Co Ltd v Burnham** [1973] 3 1176, NIRC.

Summary dismissal during period of notice—

Employee giving employer one month's notice—Employer accepting notice—Employer summarily dismissing employee before expiry of notice—Employee having no right to withdraw notice unilaterally—Tribunal not entitled to assess compensation on assumption employee might have withdrawn notice and remained in employer's service. **Harris & Russell Ltd v Slingsby** [1973] 3 31, NIRC.

Date of dismissal—

Notice by employer terminating contract—

Employer and employee subsequently agreeing during period of notice to shorten period of notice—Whether date of dismissal date of expiry of original or of shortened notice—Industrial Relations Act 1971, s 23(2). **Lees v Arthur Graeves (Lees) Ltd** [1973] 2 21, NIRC.

Period of notice—Whether employee dismissed when notice given or when period of notice expires—Industrial Relations Act 1971, s 23(2). **Brindle v H W Smith (Cabinets) Ltd** [1973] 1 230, CA.

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Dismissal for an inadmissible reason—

Dismissal of two employees who urged recognition of union—Other employees striking in protest at dismissals—Striking employees dismissed—Whether striking employees dismissed for an inadmissible reason—Trade Union and Labour Relations Act 1974, Sch 1, paras 6(4), 8(2). **Stock v Frank Jones (Tipton) Ltd** [1976] 3 218, QBD.

UNFAIR DISMISSAL (cont)

Determination whether dismissal fair or unfair (cont)—

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Unfair procedure—Right of employee to put his case before or at time of dismissal—Employee summarily dismissed with no opportunity of putting his case before or at time of dismissal—Employee having no valid answer to employers' complaints regarding his work—Employers not knowing whether employee had explanation of conduct—Whether tribunal entitled to make finding of unfair dismissal where unfair procedure leads to no injustice to employee—Whether employee entitled to compensation where unfair procedure the only matter rendering dismissal unfair—Industrial Relations Act 1971, s 24. **Earl v Slater & Wheeler (Airlyne) Ltd** [1973] 1 145, NIRC.

Question to be determined in accordance with equity and the substantial merits of the case—Meaning—Industrial Relations Act 1971, s 24(6). **Earl v Slater & Wheeler (Airlyne) Ltd** [1973] 1 145, NIRC.

Specified reasons justifying dismissal—

Disobedience—Employee refusing to be party to falsification of employers' records to cover general deficiency despite reassurance by employers' manager—Employee dismissed because of refusal—Whether employee unfairly dismissed. **Morrish v Henlys (Folkestone) Ltd** [1973] 2 137, NIRC.

Some other substantial reason justifying dismissal—Employers wishing to vary employee's contract by introducing restrictive covenant—Restrictive covenant necessary to protect employers' business—Employee refusing to sign new contract—Employers terminating employee's existing contract—Whether substantial reason justifying dismissal—Whether words 'some other substantial reason' to be construed ejusdem generis with reasons specified in statute—Industrial Relations Act 1971, s 24(1)(2). **R S Components Ltd v Irwin** [1974] 1 41, NIRC.

Dismissal—

Notice to employee to terminate contract of employment—

Agreement to terminate employment during period of notice negating dismissal—Evidence of termination by mutual consent—Need to prove employee had full knowledge of implications of agreement—Employers brings pressure on employee to stop working for them before expiry of notice—Employee submitting to pressure—Whether employment terminated by agreement—Whether employee dismissed—Industrial Relations Act 1971, s 23 **Lees v Arthur Greaves (Lees) Ltd** [1974] 2 393, CA.

Employee verbally requesting termination of contract on date prior to expiry of notice—Employers agreeing to request—Employee leaving before expiry date—Whether employee 'dismissed' or whether consensual termination of contract—Industrial Relations Act 1971, s 23(3). **McAlwane v Boughton Estates Ltd** [1973] 2 299, NIRC.

Notice by employee within obligatory period of employers' notice to terminate employment on earlier date—Notice in writing—Employee to be taken to have been dismissed—Need for notice in writing—Oral request by employee to terminate employment on earlier date—Employers consenting to request—Whether employee dismissed by employers—Industrial Relations Act 1971, s 23(3). **Glacier Metal Co Ltd v Dyer** [1974] 3 21, NIRC.

Dismissal in connection with strike or other industrial action—

Dismissal not unfair unless two or more employees of same employer who also took part in action were not dismissed—

Relevance of dates when other employees took part in action—Two of employees on strike returning to work before strike ending—All other employees dismissed—Whether employees who returned to work before others were dismissed to be treated as 'employees who also took part in that action'—Whether dismissal of other employees unfair—Trade Union and Labour Relations Act 1974, Sch 1, para 8(1)(2)(a). **Stock v Frank Jones (Tipton) Ltd** [1976] 3 218, QBD.

Employee taking part in strike on date of dismissal—

Date of dismissal—Time of dismissal—Dismissal on date of termination of strike—Dismissal after termination of strike—Whether employee taking part in strike 'on the date of dismissal'—Industrial Relations Act 1971, s 26(1). **Heath v J F Longman (Meat Salesmen) Ltd** [1973] 2 1228, NIRC.

Date of dismissal—Time of dismissal—Dismissal on date of termination of strike—Dismissal after termination of strike—Whether employee taking part in strike 'on the date of dismissal'—Industrial Relations Act 1971, s 26(1). **Heath v J F Longman (Meat Salesmen) Ltd** [1973] 2 1228, NIRC.

Strike or other industrial action—

Coercive element—Action by employees to resist coercive action by employers—Employers installing new machines and proposing to prove them before securing co-operation of employees—Employees leaving places of work and surrounding machines to prevent proving operation taking place—Employers threatening to invoke disciplinary procedure—Whether action of employees constituting a 'strike or other industrial action'—Trade Union and Labour Relations Act 1974, Sch 1, para 8(1)(2). **Thompson v Eaton Ltd** [1976] 3 384, EAT.

Entitlement to compensation—

Period of continuous employment. *See Employment* (Continuity—Period of continuous employment).

Excluded classes of employment—

Employee who ordinarily works outside Great Britain—

Work partly inside and partly outside Great Britain—Whilst in Great Britain employee ordinarily working in Great Britain—Whether also 'ordinarily working outside Great Britain'—Whether employee's right to claim compensation for unfair dismissal excluded—Trade Union and Labour Relations Act 1974, Sch 1, para 9(2). **Portec (UK) Ltd v Morgensen** [1976] 3 565, EAT. *

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Excluded classes of employment (cont)—

Employment in undertaking where less than four employees employed for prescribed period—

employed Identity of employer—Relevance—Employees in undertaking employed by different employers—Whether identity of employer relevant—Industrial Relations Act 1971, s 27(1)(a). **Kapur v Shields** [1976] 1 873, QBD.

Four employees continuously employed—Total of four employees in employment during thirteen week period—One of employees in employment immediately before termination having less than thirteen weeks' service—Whether exclusion applicable—Industrial Relations Act 1971, s 27(1)(a). **Mayhew v Richard Alexander & Son** [1973] 3 39, NIRC.

Onus of proof—Onus on employer to establish that employment within excluded class—Evidence that separate activities of employer constitute single 'undertaking'—Onus on employer to show that activity in which employee employed a separate undertaking—Industrial Relations Act 1971, s 27(1)(a). **Kapur v Shields** [1976] 1 873, QBD.

Hospital staffs. *See* **National health service** (Hospital—Staff—Terms and conditions of service—Dismissal).

Loss of future wages—

Age limit. *See* **Compensation**—Loss of future wages—Age limit, *ante*.

Reason for dismissal—

Matters known to employer at date of dismissal—

Circumstances existing which would justify dismissal—Circumstances only coming to knowledge of employers after dismissal—Discovery of facts indicating employee had been guilty of gross misconduct—Whether employers entitled to rely on those matters as constituting a reason justifying dismissal—Trade Union and Labour Relations Act 1974, Sch 1, para 6(1)(8). **W Devis & Sons Ltd v Atkins** [1976] 2 822, QBD.

Redundancy—

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Right of employee not to be unfairly dismissed—

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Exclusion of right by agreement—

Agreement by person employed under contract for fixed term of two years or more—Meaning of 'fixed term'—Contract for a definite term—Contract terminable before expiry of term by notice on either side—Whether a contract for a 'fixed term'—Industrial Relations Act 1971, s 30(b). **British Broadcasting Corporation v Ioannou** [1975] 2 999, CA.

Restriction on right where employee reaches normal retiring age or 65—

Normal retiring age—Employee in undertaking where 60 regarded as pensionable age—Employees retained in undertaking after age of 60 at discretion of employers—Employee dismissed when aged 61—Whether employee having right to present complaint of unfair dismissal—Industrial Relations Act 1971, s 28(b). **Ord v Maidstone and District Hospital Management Committee** [1974] 2 343, NIRC.

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Distribution of surplus assets among members—

Allotment association—Association formed with so-called capital of 210 £1 shares—Land held by trustees for use and benefit of members—Rules provided members to include shareholders and allotment holders—Association inactive after 1961—Sale of association's land in 1967—Distribution of assets—Categories of members entitled to participate—Method of distribution. **Re St Andrew's Allotment Association's Trusts** [1969] 1 147, ChD.

UNINCORPORATED ASSOCIATION (cont)

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Distribution of surplus assets among members (cont)—

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Determination of shares—Distribution per capita or in proportion to amount of subscriptions—Shares of different classes of members—Society established for provision of sickness and death benefits for teachers and scholars of Sunday school—Class of child members subscribing at half adult rate and entitled to half amount of adult members' benefits—Distribution on per capita basis—Child members entitled to half shares only. **Re Sick and Funeral Society of St John's Sunday School, Golcar** [1972] 2 439, ChD.

Loss of substratum—

Sick and benevolent fund—Acquiescence of members—Contributory sickness fund for firm's employees—Large reduction in membership following industrial dispute—Cessation of fund's activities—Arrangement between fund's officers to cease benefit payments and collection of contributions—Fund totally inactive for period of years—Membership remaining substantial—Fund fully viable—Whether substratum of fund lost—Whether members having acquiesced in dissolution. **Re William Denby & Sons Ltd Sick and Benevolent Fund** [1971] 2 1196, ChD.

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Disorder—

Constituency Labour Party—Powers of chairman to adjourn—Grounds +or and length of adjournment. **John v Rees** [1969] 2 274, ChD.

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Failure to pay subscription over number of years—No provision in rules for resignation—Provision for formal exclusion on failure to pay subscriptions—Member not formally excluded under rules—Member's right to resign not dependent on acceptance by society—Whether conduct of member amounting to tacit resignation. **Re Sick and Funeral Society of St John's Sunday School, Golcar** [1972] 2 439, ChD.

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Tenants' association—

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- Peace-keeping force established pursuant to resolution of Security Council—
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- Charity—
 - Educational purposes. *See* **Charity** (Education—Educational purposes—University).
 - Exemption from death duty—
 - New South Wales. *See* **New South Wales** (Death duty—Dutiable estate—Exemption—Gift of residuary estate to educational institution).
- Examination—
 - Conferring of degrees—
 - Complaint by member of university—Jurisdiction of High Court to hear complaint—Matter one for visitor of university. **Thorne v University of London** [1966] 2 338, CA.
- Officer—
 - Refusal to perform duty imposed by university statutes—
 - Mandamus—Application for order directed to chairman of convocation—Alleged refusal to perform duty imposed by university statutes—Matter for visitor of university—Refusal to re-employ teacher in school. **R v Dunsheath, ex parte Meredith** [1950] 2 741, KBD.
- Student—
 - Natural justice—
 - Student sent down for failing examination. *See* **Natural justice** (Educational establishment—Dismissal of student—Duty to hear parties etc—University—Student sent down for failing examination).
 - Residence—
 - Voting at Parliamentary elections. *See* **Elections** (Parliamentary—Qualification to vote—Residence—Residence on qualifying date—University students in halls of residence or colleges on qualifying date).
- Vice-Chancellor—
 - Power to suspend students—
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- What constitutes a university—
 - Qualities and attributes—
 - College incorporated by royal charter with limited right to confer degrees—Whether a 'university'. **St David's College, Lampeter v Ministry of Education** [1951] 1 559, ChD.

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 - Winding-up—
 - Distribution of assets. *See* **Company** (Winding-up—Power to exclude creditors not proving in time—Exclusion of creditor from benefits of distribution of assets—Unjust enrichment).
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- See* **Arrest** (Unlawful arrest).

UNLAWFUL ASSEMBLY

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UNLAWFUL DISCRIMINATION

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Town and country planning. *See* **Town and country planning** (Development—Extinction of use).

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Town and country planning—

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Compulsory purchase of land—

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Damages—

Mortgagee—

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Additional assessment. *See* **Income tax** (Additional assessment—Valuation of property).

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Matrimonial home—

Intestacy—

Right of surviving spouse to acquire home—Valuation of home. *See* **Intestacy** (Appropriation by personal representatives—Surviving spouse—Matrimonial home—Valuation).

Opening stock—

Income tax—

Computation of profits. *See* **Income tax** (Computation of profits—Opening stock—Valuation).

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Option to purchase realty at reasonable valuation. *See* **Will** (Option—Option to purchase realty—Option to purchase at reasonable valuation).

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Landlord and tenant—

Option to purchase reversion. *See* **Landlord and tenant** (Lease—Reversion—Option granted to tenant to purchase freehold reversion—Purchase price—Valuation).

Shares—

Capital gains tax for. *See* **Capital gains tax** (Assets—Valuation—Market value—Shares).

Stock—

Income tax—

Computation of profits—Accountancy principles. *See* **Income tax** (Computation of profits—Accountancy principles—Stock).

Stock-in-trade—

Income tax—

Computation of profits. *See* **Income tax** (Computation of profits—Stock-in-trade—Valuation).

Trade debts—

Income tax—

Computation of profits. *See* **Income tax** (Computation of profits—Trade debts—Valuation).

VALUATION (cont)

Valuer. *See* Valuer (Valuation).

Will—

Valuation of effects. *See* Will (Valuation of effects).

VALUATION LIST

Rates. *See* Rates (Valuation list).

VALUE ADDED TAX

Club or association—

Supply of services for a consideration—

Subscription from members constituting consideration—Services supplied by association—Members entitled under rules to individual benefits and advantages provided by association—Whether subscription consideration for bare right of membership or for individual benefits provided to members—Whether association entitled to claim exemption or zero-rating in respect of part of subscription attributable to services ranking as exempt or zero-rated—Finance Act 1972, ss 2(2), 5(2)(8), 45(1). *Comrs of Customs and Excise v The Automobile Association* [1974] 1 1257, QBD, *Barton v Comrs of Customs and Excise* [1974] 3 337, QBD.

Costs—

Taxation. *See* Costs (Taxation—Value added tax).

Exemptions—

Financial services—

Making arrangements for certain transactions—Arrangements for making of advance—Arrangements involving issue, transfer or receipt of a security not exempt—Money brokers making arrangements for an advance on behalf of bank—Second bank agreeing to advance money on condition first bank issued certificate of deposit—Brokers acting on behalf of both banks and receiving commission from both banks—Separate services to each bank—Whether services to two banks to be treated as a whole as relating to single transaction—Whether services exempt in whole or in part as consisting of making arrangements for the 'making of any advance'—Whether services taxable as consisting of making arrangements for the 'issue, transfer or receipt of any security'—Finance Act 1972, s 13(1), Sch 5, Group 5, items 2, 3, 4. *Customs and Excise Comrs v Guy Butler (International) Ltd* [1976] 2 700, CA.

Grant of right over or licence to occupy land—

Agreement between airport authority and concessionaires—Concessionaires granted right to display and sell goods from shop premises in airport—Whether agreement conferring on concessionaires separate rights to occupy land and to sell and display merchandise—Whether whole consideration exempt as consideration for grant of right over or licence to occupy land—Finance Act 1972, Sch 5, Group 1, item 1. *British Airports Authority v Customs and Excise Comrs* [1975] 3 1025, QBD.

Members' club—Subscriptions—Club owning land and providing facilities for sport and recreation—Right of members to share in proceeds on dissolution of club—Members paying annual subscriptions for facilities—Whether subscriptions paid for the grant of an interest in or right over land—Whether members having a licence to occupy land—Whether subscriptions exempt—Finance Act 1972, ss 13(1), 45(1)(b), Sch 5, Group 1, item 1 (as substituted by the Value Added Tax (Consolidation) Order 1974 (SI 1974 No 1146)). *Trewby v Customs and Excise Comrs* [1976] 2 199, QBD.

Insurance—

Provision of insurance of any description—Meaning of 'provision of insurance'—Whether limited to the provision of insurance cover—Whether including the settling of claims—Finance Act 1972, Sch 5, Group 2, item 1. *National Transit Insurance Co Ltd v Customs and Excise Comrs* [1975] 1 303, QBD.

Input tax—

Tax on supply to a taxable person of goods or services for purpose of business carried on by him—

Supply for purpose of business—Administration of pension funds for benefit of employees—Professional services supplied for purpose of administering funds—Tax paid on supply of professional services—Whether management of pension funds part of taxpayer's business—Whether professional services supplied for purpose of business—Finance Act 1972, s 3(1). *Customs and Excise Comrs v British Railways Board* [1976] 3 100, CA.

Registration—

Partnership—

Registration in name of firm—Separate partnerships having same partners—Partnerships carrying on separate business—Whether partnerships separate taxable persons—Whether commissioners required to register each partnership in firm name—Finance Act 1972, s 22(1). *Comrs of Customs and Excise v Glassborow* [1974] 1 1041, QBD.

Relief—

Goods held at commencement of April 1973—

Goods on which purchase tax or other duty paid—Deduction as input tax of purchase tax or duty paid—Goods deemed to be held on material date by taxpayer—Goods supplied to taxpayer before that date and not by then supplied by him—Goods supplied to taxpayer before material date—Goods subsequently destroyed before material date—Whether goods deemed to be held by taxpayer on material date—Finance Act 1973, s 4(1)(6). *Revell Fuels Ltd v Customs and Excise Comrs* [1975] 1 312, QBD.

Supply of goods or services—

Supply—

Furnishing or serving goods etc—Club—Unincorporated members' social club—Club licensed to serve intoxicating liquor to members on club premises—Drinks served to members on payment of sum of money—Drink already property of members and serving of drinks not constituting sale to members—Whether serving of drinks constituting 'supply of goods or services' to members—Finance Act 1972, s 1(1). *Carlton Lodge Club v Customs and Excise Comrs* [1974] 3 798, QBD.

VALUE ADDED TAX (cont)

Supply of goods or services (cont)—

Supply of services for a consideration—

Expenses—Reimbursement—Principal and agent—Sum paid by principal to agent towards cost of agent's expenses incurred on behalf of principal—Whether sum paid a consideration for services supplied by agent—Finance Act 1972, s 5(2). **National Transit Insurance Co Ltd v Customs and Excise Comrs** [1975] 1 303, QBD.

Expenses—Reimbursement—Solicitor—Expenditure on behalf of client—Disbursements—Travelling expenses incurred by solicitor whilst acting on behalf of client—Separate charge to client in solicitor's bill—Whether payment of sum for travelling expenses by client reimbursement of expenses or part of consideration for supply of legal services—Finance Act 1972, s 5(2). **Rowe & Maw (a firm) v Customs and Excise Comrs** [1975] 2 444, QBD.

Time of supply—

Supply of goods on hire—Retrospective effect of statute introducing value added tax—Agreement for hire made and goods delivered under agreement before statute enacted—Agreement providing for periodic payments—Power of commissioners to make regulations providing for time of supply where goods 'are supplied' for consideration payable periodically—Commissioners making regulations—Regulations providing for goods supplied under hire agreement to be treated as being supplied on each occasion payment of hire received—Regulation applying to goods supplied under hire agreement made before statute enacted—Whether regulation ultra vires—Finance Act 1972, ss 5(2), 7(2)(8)—Value Added Tax (General) Regulations 1972 (SI 1972 No 1147), reg 14(1). **Customs and Excise Comrs v Thorn Electrical Industries Ltd** [1975] 3 881, HL.

Value of supply of goods or services—

Supply for consideration in money—

Payment for goods by means of cash vouchers—Vouchers issued by company—Taxpayer accepting vouchers from customers in exchange for goods—Taxpayer entitled to reimbursement from company of cash value of vouchers less an agreed commission due to company—Whether goods supplied in exchange for vouchers supplied for a consideration in money—Whether tax to be charged by reference to the value of the goods supplied less amount of commission due to company—Finance Act 1972, ss 9(1), 10(2). **Davies v Customs and Excise Comrs** [1975] 1 309, QBD.

Zero-rating—

Services to overseas traders or for overseas purposes—

Supply to overseas resident of services not used in United Kingdom—Club or association—Overseas members—Association issuing publications and providing other facilities to members—Whether subscriptions from overseas members consideration for supply of services not used in United Kingdom—Finance Act 1972, Sch 4, Group 9, item 6. **Barton v Commissioners of Customs and Excise** [1974] 3 337, QBD.

Transport of passengers—

Carriage of passengers from one point to another—Amusement device—Big dipper—Passengers carried by vehicle on specially constructed track consisting of corners and inclines—Movement of passengers in effect confined to one spot—Whether provision of rides constituting 'transport of passengers'—Finance Act 1972, s 12(2), Sch 4, Group 10, item 4. **Comrs of Customs and Excise v Blackpool Pleasure Beach Co** [1974] 1 1011, QBD.

VALUER

Expert evidence—

Hearsay—

Admissibility—Evidence of comparables—Expression of opinion on values—Opinion formed in part by matters of which valuer having no first-hand knowledge—Evidence of transactions of which valuer having no first-hand knowledge—Extent to which evidence admissible. **English Exporters (London) Ltd v Eldonwall Ltd** [1973] 1 726, ChD.

Immunity from suit—

Negligent valuation. *See* **Negligence** (Immunity from suit—Valuer).

Negligence—

Duty to exercise reasonable skill and care. *See* **Negligence** (Professional person—Duty to exercise reasonable skill and care—Estate agent—Valuation of property).

Information or advice—

Damage giving rise to liability. *See* **Negligence** (Information or advice—Damage giving rise to liability—Danger to life, limb or health—Valuation of property).

Reliance on skill and judgment. *See* **Negligence** (Information or advice—Reliance on skill and judgment—Valuer).

Notice to quit—

Validity—

Agreement providing for signature by landlord's valuer—Signature by valuer's assistant. *See* **Landlord and tenant** (Validity of notice to quit—Signature—Agreement providing for signature by landlord's valuer—Signature by valuer's assistant).

Valuation—

Erroneous principle—

Validity—Evidence of result of valuation on correct principle—Prosperous family company—Agreement for disposal of assets at a valuation—Valuation to be of business 'as a going concern'—Valuation of machinery to be by expert valuer—Valuer appointed under terms of agreement—Valuation of premises made on 'break-up' basis—Failure to employ expert to value machinery—Valuation erroneous in principle—Whether valuation binding on parties—Whether necessary to show that valuation on correct principle would show materially different result. **Jones (M) v Jones (R R)** [1971] 2 676, ChD.

VALUER (cont)

Valuation (cont)—

Mistake—

Validity—Contractual purchase price—Valuation to determine price under contract—Determination giving no reasons for figure determined—Evidence that figure determined by valuer excessive—No fraud or collusion—Whether open to purchaser to obtain order setting aside valuer's determination on ground of mistake. **Campbell v Edwards** [1976] 1 785, CA.

Setting aside valuation—

Purchase price to be ascertained on balancing assets and liabilities—Independent accountants acting as experts not arbitrators—Liabilities including loans alleged to be unenforceable as made by unlicensed moneylenders—Whether accountants bound to consider whether Moneylenders Acts, 1900 to 1927, applied to loans—Accountants' report giving their reasons—Whether accountants' certificate of nil purchase price was open to challenge and should be set aside. **Frank H Wright (Constructions) Ltd v Frodoor Ltd** [1967] 1 433, QBD.

Shares of private company—Sale to directors at price certified by auditor as fair value—Grounds for setting aside valuation. **Dean v Prince** [1954] 1 749, CA.

Shares—

Valuation for purposes of sale—Price to be fixed by valuer—Action against valuer—Alleged breach of warranty—Alleged failure of consideration—No liability in absence of mala fides. **Finnegan v Allen** [1943] 1 493, CA.

VAN

Mobile—

Equipped as shop. *See* **Shop** (Sunday closing—Retail trading elsewhere than in shop—Mobile van equipped as shop).

VARIATIONAffiliation order. *See* **Affiliation** (Affiliation order—Variation).

Alimony—

Divorce. *See* **Divorce** (Alimony—Variation).

Contract. *See* **Contract** (Variation).

Deceased's estate—

Order of application of assets. *See* **Administration of estates** (Order of application of assets—Statutory order—Variation).

Financial provision—

Divorce. *See* **Divorce** (Financial provision—Variation of order).

Lease. *See* **Landlord and tenant** (Lease—Variation).Maintenance agreement. *See* **Husband and wife** (Variation of maintenance agreement).

Maintenance order—

Divorce. *See* **Divorce** (Maintenance—Variation of order).

Husband and wife. *See* **Husband and wife** (Variation or discharge of maintenance order).

Order—

Stay of execution. *See* **Execution** (Stay—Variation of terms of stay).

Order for costs—

Application—

Legal aid. *See* **Legal aid** (Order for costs—Variation—Application).

Separation order. *See* **Husband and wife** (Separation order—Variation).Trusts. *See* **Variation of trusts**.Undertaking in lieu of injunction. *See* **Injunction** (Undertaking—Variation).**VARIATION OF SETTLEMENT (MATRIMONIAL CAUSES)**

Adopted child—

Jurisdiction to admit adopted child to benefit under settlement—

Compensation for natural children—Matrimonial Causes Act 1950, s 25. **Purnell v Purnell** [1961] 1 369, Div.

Ante-nuptial and post-nuptial settlement—

Transfers of money before and after marriage—

No element of periodicity—Transactions completed—Whether they constituted settlements for the purpose of anticipatory protection by injunction—Matrimonial Causes Act 1950, s 25. **Hindley v Hindley** [1957] 2 653, Div.

Ante-nuptial settlement—

Adoption of child after marriage—

Subsequent birth of child of marriage—Whether settlement ought to be varied to include adopted child—Adoption Act 1950, s 13(2)—Matrimonial Causes Act 1950, s 25. **Best v Best** [1955] 2 839, Div.

Deed made in consideration of marriage—

Deed containing covenant to transfer securities as absolute gift immediately after marriage—Transfer of securities to husband accordingly—Whether ante-nuptial settlement—Matrimonial Causes Act 1950, s 25. **Prescott (or se Fellowes) v Fellowes** [1958] 3 55, CA.

House purchased before marriage to provide matrimonial home—

Contribution by wife towards purchase price—Conveyance into the name of the husband alone—Divorce on ground of wife's adultery—One child of marriage—Variations of wife's beneficial interest in half share, so as to make provision for child—Variation not punitive—Matrimonial Causes Act 1965, s 17(1). **Ulrich v Ulrich and Felton** [1968] 1 67, CA.

Income of trust fund to be paid to wife if marriage undissolved—

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Joint power and power to survivor of spouses—Powers and interests of wife extinguished as if dead—Whether husband could exercise power during life of wife. **Re Poole's Settlements' Trusts** [1959] 2 340, ChD.

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Bankruptcy proceedings—Proof of debt in pending proceedings by non-petitioning creditor—Order in force requiring creditor to obtain leave of High Court before instituting legal proceedings—Whether creditor required to obtain leave before proving debt or appealing against rejection of proof—Supreme Court of Judicature (Consolidation) Act 1925, s 51(1) (as amended by the Supreme Court of Judicature (Amendment) Act 1959, s 1(1)). **Re Wilson (I D) (a bankrupt), ex parte Bebbington Easton** [1973] 1 849, ChD.

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VICARIOUS LIABILITY (cont)

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Manager of company riding in company's car—

Injury suffered through negligence of driver employed by company—No term in manager's contract of service obliging him to travel by car. **Pollock v Charles Burt Ltd** [1940] 4 264, CA.

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Injured by negligence of fellow servant—Liability of employer. **Dorrington v London Passenger Transport Board** [1947] 2 84, KBD.

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Linesman repairing overhead wires spanning highway—Linesman injured by trolley bus—Whether carelessness of trolley bus driver a special risk to linesman or a general risk of highway. **Lancaster v London Passenger Transport Board** [1948] 2 796, HL.

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Voluntary assistance of servant by stranger—

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Duty of employer to see that reasonable care taken by contractor—Tort of strict liability—Explosion on oil tanker—Exclusion of defence of independent contractor. **Owners of the Steamship Pass of Ballater v Cardiff Channel Dry Docks and Pontoon Co Ltd** [1942] 2 79, Adm.

Solicitor employing enquiry agent in divorce proceedings—Solicitor acting in divorce proceedings on behalf of one spouse—Trespass by enquiry agent in home of other spouse. **Jolliffe v Willmetts & Co** [1971] 1 478, QBD.

Work done near highway—Work not dangerous if competently done—Tree felled so incompetently that it brought telephone wires down on to highway, causing collision with car and consequent injury to pedestrian. **Salsbury v Woodland** [1969] 3 863, CA.

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Music-hall artists—Control by manager over artists—Some degree of supervision and control—Sufficiency—Dancer—Shoe kicked off and hitting member of audience—Liability of manager. **Fraser-Wallas v Waters** [1939] 4 609, KBD.

Porters at landing stage—Bogies for carrying passengers' luggage provided by shipowners and others—Bogies used indiscriminately by porters for all business at landing stage—No supervision or control by shipowners. **Norton v Canadian Pacific Steamships Ltd** [1961] 2 785, CA.

VICARIOUS LIABILITY (cont)

Independent contractor (cont)—

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Salesman driving own car—Samples provided by company who paid commission and petrol allowance—Very little control over salesman's work—Company not liable for negligent driving. **Egginton v Reader** [1936] 1 7, KBD.

Loan of servant—

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Unskilled labourer—No consent to transfer—Duty to comply with new employers' directions as to way of doing work—Old employers' liability for wages and insurance and right of dismissal—Whether servant under 'contract of service' with new employer. **Denham v Midland Employers' Mutual Assurance Ltd** [1955] 2 561, CA.

Dock labourer—

General servant of harbour board—Working regularly for company acting as master stevedores at docks—Dock labourer injured through unsafe system of work—Whether harbour board or company liable. **Gibb v United Steel Cos Ltd** [1957] 2 110, Assizes.

Hire of crane-excavator and driver—

Accident while excavator on site—Apportionment of responsibility as between owners and hirers—Hiring contract provided that driver should be regarded as servant of hirers for all purposes in connection with working of plant and that hirers should be responsible for claims in connection with working of plant—Maintenance of plant left as responsibility of owners—Accident caused by negligence of driver partly in connection with the working of the plant and partly in maintenance of the plant—Responsibility apportioned as to forty per cent to owners. **Arthur White (Contractors) Ltd v Tarmac Civil Engineering Ltd** [1967] 3 586, HL.

Hire of crane and driver—

Contract subject to dock regulations—Provision that 'the drivers so provided shall be the servants of the applicants'—Accident due to negligent driving of driver—Driver not subject to control of hirer in regard to manner of driving—General employer responsible for negligent driving of driver. **Mersey Docks and Harbour Board v Coggins & Griffiths (Liverpool) Ltd and McFarlane** [1946] 2 345, HL.

Hirer to be responsible for driver's acts as though driver were in hirer's direct employ—Accident due to negligence of driver—Whether owner entitled to be indemnified. **Herdman v Walker (Tooting) Ltd (City Plant Hirers Ltd, third party)** [1956] 1 429, QBD.

Injury to driver of crane hired to stevedores—Responsibility of stevedores in respect of particular operation. **Holt v W H Rhodes & Son Ltd** [1949] 1 478, CA.

Hire of driver—

Long-standing arrangement—Hirer's duty to servant—Whether that of invitor or employer—Driver working for hirer full time—Driver injured through unsafe method of unloading adopted by hirer—Employer liable. **O'Reilly v Imperial Chemical Industries Ltd** [1955] 3 382, CA.

Hire of vehicle and driver—

Accident due to negligence of driver—Whether hirer or regular employer responsible for negligence of driver. **Dowd v W H Boase & Co Ltd, McFarlane v Coggins & Griffiths (Liverpool) Ltd** [1945] 1 605, CA.

Accident to lorry while so hired—Responsibility for negligence of driver on owner. **Willard v Whiteley Ltd** [1938] 3 779, CA.

Contract for carriage and delivery of hirer's goods—Driver to obey all orders of hirer and wear prescribed uniform—Employer liable for driver's negligence. **Century Insurance Co Ltd v Northern Ireland Road Transport Board** [1942] 1 491, HL.

Hirer having no control over driver other than directing him where deliveries to be made—Owner liable for driver's negligence. **Bontex Knitting Works Ltd v St John's Garage** [1944] 1 381, CA.

Servant 'lent' by employers to occupiers of factory—

Materials, tools and equipment provided by occupiers—Work controlled by factory foreman—Temporary employer liable for servant's negligence. **Garrard v Southey & Co (Davey Estates Ltd, third parties)** [1952] 1 597, QBD.

Skilled shotfirer, servant of sub-contractor, blasting rock for building contractor—

Building contractor failing to provide flagman or ladder to assist shotfirer to get up and down slippery bank when acting as flagman—Shotfirer injured through slipping on bank—Whether shotfirer the servant for the time being of the building contractor. **Savory v Holland, Hannen and Cubitts (Southern) Ltd** [1964] 3 18, CA.

Tug and crew under towage contract—

Collision between tug and another vessel—Negligence of officer-in-charge of tug—Whether tug-owners or tow-owners liable. **The Panther and the Ericbank** [1957] 1 641, Adm.

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No request for services—Liability of master. **Clelland v Edward Lloyd Ltd** [1937] 2 605, KBD.

Master and servant—

Act outside scope of employment—

Employee carrying fellow employee back to place of work—Vehicle owned by employee's father—Employee under no obligation to employer to carry fellow employee—Employee entitled to passenger allowance from employer—Fellow employee injured owing to negligent driving of employee—Journey in course of employment—Employee not acting as servant of employer at relevant time. **Nottingham v Aldridge (Prudential Assurance Co Ltd, third party)** [1971] 2 751, QBD.

Wilful misbehaviour—Employers engaged in business of breaking down scrap metal—Employees discovering live shell amongst scrap—Employees inviting plaintiff to hit shell—Plaintiff seriously injured in consequence of hitting shell—Liability of employers. **O'Reilly v National Rail and Tramway Appliances Ltd** [1966] 1 499, Assizes.

Wilful misbehaviour—Servant injured through isolated act of wilful misbehaviour—Negligence of fellow servant outside scope of employment. **O'Reilly v National Rail and Tramway Appliances Ltd** [1966] 1 499, Assizes.

VICARIOUS LIABILITY (cont)

Master and servant (cont)—

Act within course of employment—

Act authorised but not an act in discharge of duty to master—Lorry driver permitted to stop for refreshment during long journeys—Collision with motor cyclist while lorry driver walking across road to reach café. **Crook v Derbyshire Stone Ltd** [1956] 2 447, Assizes.

Act done on way to collect wages but after day's work completed—Servant bicycling on master's premises to collect wages at required time—Collision with fellow-servant while servant making detour across bus park—Fellow-servant killed—Servant acting in the course of his employment. **Staton v National Coal Board** [1957] 2 667, QBD.

Authorised act done in improper manner. *See* Master and servant—Authorised act done in improper manner, *post*.

Liability of master when servant cannot be sued—Injury to servant's wife due to servant's negligence. **Broom v Morgan** [1953] 1 849, CA.

Prohibited act—Limitation on scope of employment—Act prohibited by master—Effect of prohibition—Prohibition affecting mode of conduct within scope of employment rather than limiting scope of employment—Milkman—Employers expressly prohibiting milkmen from carrying children on milk floats—Milkman carrying child on float for purpose of assisting in delivery of milk—Child injured in consequence of milkman's negligent driving—Whether employers liable for milkman's negligence. **Rose v Plenty** [1976] 1 97, CA.

Servant authorised to drive master's van and permitted to use van in order to obtain refreshment—Accident while returning in van to site of work after journey to café—Fellow-servant, riding in van, killed. **Hilton v Thomas Burton (Rhodes) Ltd** [1961] 1 74, Assizes.

Servant authorised to use private motor cycle combination—Accident while returning to work after buying tools and obtaining meal—Injury to fellow servant riding in sidecar. **Harvey v R G O'Dell Ltd (Galway third party)** [1958] 1 657, QBD.

Servant using private car—No instructions not to use a private car—Private car previously used with knowledge of master. **McKean v Raynor Bros Ltd** [1942] 2 650, KBD.

Threat by garage customer to report employee—Assault on customer by employee. **Warren v Henlys Ltd** [1948] 2 935, KBD.

Volunteer—Consignee injured while assisting master's servant—Duty of carriers to avoid injury to person properly upon premises where goods are delivered apart from any implied contract of employment. **Lomas v M Jones & Son** [1943] 2 548, CA.

Authorised act done in improper manner—

Authority of servant—Ostensible authority—Fraud of solicitor's managing clerk involving forgery. **Uxbridge Permanent Benefit Building Society v Pickard** [1939] 2 344, CA.

Implied authority—Bus conductor employed by defendants—Implied authority of conductor to keep order among passengers—Conductor assaulting passenger—No evidence of disorder or of emergency situation requiring forcible action—Whether conductor acting within scope of implied authority—Whether defendants vicariously liable for conductor's act. **Keppel Bus Co Ltd v Sa'ad bin Ahmad** [1974] 2 700, PC.

Lorry driver permitting workman to drive lorry—Employee's prohibition on allowing anyone but lorry driver himself to drive. **Ilkiw v Samuels** [1963] 2 879, CA.

Onus of proof—Servant putting vehicle away moving another vehicle improperly and without authority, to get it out of way—Injured third person a fellow servant. **Kay v ITW Ltd** [1967] 3 22, CA.

Servant employed as garage hand to move customers' cars in garage—Car driven on to highway in course of being moved from one place to another in garage—Servant having no licence and expressly prohibited from driving. **London County Council v Cattermole (Garages) Ltd** [1953] 2 582, CA.

Servant using his own car which was uninsured contrary to prohibition. **Canadian Pacific Ry Co v Lockhart** [1942] 2 464, PC.

Common employment. *See* Common employment, *ante*.

Criminal act of servant—

Exemption clause in contract invalid—Theft by servant. **John Carter (Fine Worsteds) Ltd v Hanson Haulage (Leeds) Ltd** [1965] 1 113, CA.

Scope of employment—Rent collector employed by estate agent—Authorisation by master to determine suitability of tenant—Requirement of premium as condition of grant of tenancy—Landlord and Tenant (Rent Control) Act 1949, s 2(1). **Barker v Levinson** [1950] 2 825, KBD.

Servant of bailee for reward—Business of cleaners—Theft of fur by servant entrusted with cleaning. **Morris v C W Martin & Sons Ltd** [1965] 2 725, CA.

Servant of bailee for reward—Carriage of goods by servants of transport contractor—Theft of goods. **United Africa Co Ltd v Saka Owoade** (1954) [1957] 3 216, PC.

Statutory offence of 'wilfully or negligently' failing to comply with conditions of licence. **G Newton Ltd v Smith** [1962] 2 19, QBD.

Defence—

Breach of statutory duty of servant—Volenti non fit injuria is a defence to vicarious responsibility of master—Causation—Joint enterprise of fellow servants in breach of duty—Quarries (Explosives) Regulations 1959 (S I 1959 No 2259), reg 27(4). **Imperial Chemical Industries Ltd v Shatwell** [1964] 2 999, HL.

Contributory negligence of servant—Standard of care. **Staveley Iron & Chemical Co Ltd v Jones** [1956] 1 403, HL.

Extent of duty with regard to workplaces not under master's control—

Inspection of means of access—Ladder between hold and deck of ship—Ship owned and occupied by third party—Ship unloading in dock—Injury caused by rope wound round or near ladder rendering ladder an unsafe means of access—Whether master's duty to inspect ladder. **Mace v R & H Green & Silley Weir Ltd** [1959] 1 655, QBD.

Servant sent to clean third party's windows—Injury due to handle coming away from window—Liability of master. **Wilson v Tyneside Window Cleaning Co** [1958] 2 265, CA.

VICARIOUS LIABILITY (cont)

Master and servant (cont)—

Indemnity of master for servant's negligence—

Injury to fellow workman—Implied terms of contract of service—Duty of servant to take care—Servant employed as lorry driver—Whether master required to insure servant against his own negligence—Whether servant entitled to benefit of insurance effected by master. **Lister v Romford Ice & Cold Storage Co Ltd** [1957] 1 125, HL.

Injury to fellow workman—Implied term of contract of service—Servant employed as storekeeper—Authorised to use his own motor cycle in travelling to and from outside job—Injury to fellow-servant in sidecar—Whether implied term of contract of service as storekeeper to use care while driving. **Harvey v R G O'Dell Ltd (Galway third party)** [1958] 1 657, QBD.

Liability for act of sub-contractor—

Workman employed by building contractor injured by fall from dangerous scaffold platform—Platform created or altered by sub-contractor—Contractor responsible for scaffolding—Failure to warn workman—Contributory negligence. **Simmons v Bovis Ltd** [1956] 1 736, Assizes.

Loan of servant. *See* Loan of servant, *ante*.

Prohibited act by servant—

Act within course of employment. *See* Master and servant—Act within course of employment—Prohibited act, *ante*.

Injured person's knowledge of prohibition—Prohibition likely to be known to injured person—Opportunity to avoid danger of injury from prohibited acts—Whether prohibitions conclusive as against injured persons of scope of servant's employment—Whether master liable for injuries caused by prohibited acts of servant. **Stone v Taffe** [1974] 3 1016, CA.

Unauthorised passenger on employer's vehicle—Negligent driving of vehicle by employee—Accident to unauthorised passenger in lorry—Passenger a trespasser on vehicle—Extent of duty to take care. **Conway v George Wimpey & Co Ltd** [1951] 1 363, CA.

Unauthorised passenger on employer's vehicle—Negligent driving of vehicle by employee—Fatal accident to unauthorised passenger—Passenger a trespasser on vehicle—Whether employer liable for negligent driving of employee. **Twine v Bean's Express Ltd** [1946] 1 202, KBD.

Use by servant of his own uninsured car contrary to prohibition. **Canadian Pacific Ry Co v Lockhart** [1942] 2 464, PC.

Supervision or control—

Producer of variety programme—Producer engaging dancers to appear in programme—Producer exercising certain degree of supervision and control over dancers—Heel of dancer's shoe becoming detached and hitting member of audience—Liability of producer—Whether dancer servant or independent contractor. **Fraser-Wallas v Elsie and Doris Waters (a firm)** [1939] 4 609, KBD.

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Operation at hospital—Negligence of resident hospital staff in course of post-operative care—Liability of surgeon for acts of hospital staff. **Morris v Winsbury-White** [1937] 4 494, KBD.

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Motor car left with garage for repairs—Employee of garage instructed to drive owner to railway station in owner's car—Owner injured in accident due to negligence of driver—Liability of garage. **Chowdhary v Gillot** [1947] 2 541, KBD.

Driver using car as owner's agent—

Evidence—Inference from ownership of car—Rebuttal—Prima facie inference from ownership rebutted on facts. **Rambaran v Gurrucharan** [1970] 1 749, PC.

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Car driven by friend of owner partly for owner's purposes. **Ormrod v Crosville Motor Services Ltd (Murphie, third party)** [1953] 2 753, CA.

Car driven for purposes of car owner's son—Car driven at request of car owner—Request to drive car for son's purposes as distinct from permission by car owner for use by son. **Carberry v Davies** [1968] 2 817, CA.

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Loan of car by employers to employee on condition that fellow employee be given lifts to work—Car driven for employers' purposes—Driver employers' agent. **Vandyke v Fender (Sun Insurance Office Ltd, third party)** [1970] 2 335, CA.

Husband and wife—

Husband using wife's car to travel to work—Car regarded by husband and wife as belonging to them both—Promise by husband to wife that if unfit to drive through drink he would ask friend to drive—Husband using car to visit public house after work—Husband unfit to drive—Husband asking third party to drive car—Third party offering friends lift in car—Accident caused by negligent driving of third party—Passengers injured—Whether third party driving car as wife's agent—Whether wife liable to passenger as owner of car. **Morgans v Launchbury** [1972] 2 606, HL.

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Personal injury—Heart disease aggravated by nature of employment—Contributory factor leading to death—Claim by dependants under Workers Compensation Act 1958—Act amended after deceased taken ill before death—Amendment increased rates of benefit—Whether dependants entitled to increased benefit—Workers Compensation Act 1958 (State of Victoria No 6419), ss 5(1), 9(1). **Ogden Industries Pty Ltd v Lucas** [1969] 1 121, PC.

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WAITER (cont)

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Criminal proceedings—Purported waiver on behalf of accused).

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Sale of land—

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Exemption from estate duty. *See* **Estate duty** (Exemption—Death on war service).Emergency legislation. *See* **Emergency legislation**Essential work. *See* **Essential work**.Frustration of contract. *See* **Contract** (Frustration—War).

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Prisoners of war—

Privileges of prisoners protected by Geneva Convention—

Nationals of detaining power not entitled to privileges of Geneva Convention as prisoners of war—Persons owing allegiance to detaining power, though not such nationals, also not so entitled—Geneva Conventions Act 1962 (No 5 of 1962), s 4(1). **Public Prosecutor v Koi** [1968] 1 419, PC.

Rule against perpetuities—

Duration of war. *See* **Rule against perpetuities** (Gift over after uncertain period—Duration of war).

Termination of agency—

Duty to account. *See* **Agent** (Account—Duty to account—Agency terminated by war).

War service injury—

War pension. *See* **War pension** (War service injury).

WAR (cont)

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WAR AND EMERGENCY

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Compulsory acquisition of interest in war-damaged hereditament. *See* **Compulsory purchase** (Compensation—Assessment—Interest in war-damaged hereditament).

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Outgoings—Condition. *See* **Sale of land** (Condition—Apportionment of outgoings—War damage contribution).Outgoings—Rights of parties. *See* **Sale of land** (Outgoings—Rights of parties pending completion—War damage contribution).Defence to statutory nuisance. *See* **Nuisance** (Statutory nuisance—Defence—War damage).

Disclaimer of lease—

Apportionment of rent—

Retrospective operation of statute—Landlord and Tenant (War Damage) (Amendment) Act 1941, s 13. **London Fan and Motor Co Ltd v Silverman** [1942] 1 307, KBD.

Block of property let by three separate leases but used as a whole—

Need to consider leases separately—Whether landlord liable to replace tenants' fixtures—Landlord and Tenant (War Damage) Act 1939, s 6(1)—Landlord and Tenant (War Damage) (Amendment) Act 1941. **Wallis & Co (Costumiers) Ltd v Oppenheim** [1943] 1 114, CA.

Ground lease—

Order of court necessary—Transfer of proceedings from county court to High Court—Circumstances in which appropriate—County Courts Act 1934, s 111—Landlord and Tenant (War Damage) Act 1939, ss 13, 23. **Clavering v Conduit Mead Co** [1941] 1 30, ChD.Order of court necessary—Transfer of proceedings from county court to High Court—Ex parte application—County Courts Act 1934, s 111—Landlord and Tenant (War Damage) Act 1939, s 13, 23. **Metropolitan Leather Co Ltd v Herrmann** [1941] 1 29, ChD.Multiple lease. *See* Landlord and tenant—Multiple lease, *post*.

Notice of disclaimer—

Effect on liability to pay rent—Rent payable in advance—Notice of disclaimer served after rent due—No valid notice to avoid disclaimer—Landlord and Tenant (War Damage) Act 1939, ss 8, 11, 24. **Hildebrand v Lewis** [1941] 2 584, CA.Effect on liability to pay rent—Rent payable in advance—Notice of disclaimer followed by notice to avoid disclaimer—Liability for rent after notice of disclaimer—Landlord and Tenant (War Damage) Act 1939, s 11. **Turner v Stella Bond Ltd** [1941] 1 449, CA.Form of notice—Sufficiency—Landlord and Tenant (War Damage) Act 1939, ss 4, 8. **Black and Black v Mileham** [1941] 3 269, CA.Notice served one year after damage but ante-dated for purposes of repayment of rent—Validity—Landlord and Tenant (War Damage) Act 1939, ss 4, 5, 8—Landlord and Tenant (War Damage) (Amendment) Act 1941, s 13. **Attorney-General v Daimler Co Ltd** [1944] 2 214, CA.

Notice to avoid disclaimer—

Application by landlord for declaration that premises capable of beneficial occupation—No basis for application—Landlord and Tenant (War Damage) Act 1939, ss 6, 11(1)(c). **Cooper v Jax Stores Ltd** [1941] 1 502, CA.Form of notice—Multiple lease—Landlord and Tenant (War Damage) Act 1939, s 15—Landlord and Tenant (War Damage) (Amendment) Act 1941, Sch. **Goodman v Elkington** [1946] 2 756, CA.Form of notice—Reference to wrong section—Validity of notice—Landlord and Tenant (War Damage) Act 1939, s 4. **Price v Mann** [1942] 1 453, CA.Landlord's obligation to render land fit as soon as reasonably practicable—Extent of repairs required to make premises 'reasonably fit'—Factors to be considered—Use of premises in particular neighbourhood—Landlord and Tenant (War Damage) Act 1939, s 11. **Littman v Goorwitch Ltd** [1945] 1 24, KBD.

Insurance of goods against war damage—

Goods—

Business scheme—Loss of account-books through enemy action—Documents owned for purpose of business excluded from definition of 'goods'—Whether account-books 'documents'—War Risk Insurance Act 1939, s 7(1)—War Damage Act 1943, ss 2(1), 83, 84(1)(4), 95, 104. **Hill v R** [1945] 1 414, KBD.Business scheme—Loss of working drawings used in the process of manufacture through enemy action—Documents owned for purposes of business excluded from definition of 'goods'—Whether working drawings 'documents'—War Damage Act 1943, ss 84(1)(a), 104. **J H Tucker & Co Ltd v Board of Trade** [1955] 2 522, ChD.

WAR DAMAGE (cont)

Landlord and tenant—

Disclaimer of lease. *See* Disclaimer of lease, *ante*.

Multiple lease—

Disclaimer and retention of lease—Lease comprising two separate buildings—One building rendered unfit for occupation—Whether tenant entitled to disclaim as to one building and retain as to other—'Allow'—Jurisdiction of the court—Landlord and Tenant (War Damage) Act 1939, s 15(3)(4)(5)—Landlord and Tenant (War Damage) (Amendment) Act 1941, Sch. **Re Fitzhardinge's Lease** [1944] 2 535, CA.Disclaimer of part of premises—Reduction in rent—Landlord and Tenant (War Damage) Act 1939, ss 5(4), 6, 9, 10, 11, 15, 24. **Westminster Bank Ltd v Edwards** [1942] 1 470, HL.Lease comprising buildings adapted for use as two or more separate tenements—Adapted for use—Disclaimer for demised premises as a whole—Landlord and Tenant (War Damage) Act 1939, s 15(3)—Landlord and Tenant (War Damage) (Amendment) Act 1941. **Herrmann v Metropolitan Leather Co Ltd** [1942] 1 294, ChD.Notice to avoid disclaimer—Form of notice—Landlord and Tenant (War Damage) Act 1939, s 15—Landlord and Tenant (War Damage) (Amendment) Act 1941, Sch. **Goodman v Elkington** [1946] 2 756, CA.

Power to disclaim lease—

Power where land comprised in lease unfit by reason of war damage—Unfit—Landlord and Tenant (War Damage) Act 1939, ss 1, 4, 6, 11, 24. **Boudou v Thornton-Smith** [1941] 1 454, CA.

Relief from obligation to repair—

Nuisance—Damage to roofs caused by enemy action—Abatement notice served on landlord—Liability to repair in case of war damage—Public Health Act 1936, s 92(1), s 93—Landlord and Tenant (War Damage) Act 1939, s 1(1). **Turley v King** [1944] 2 489, KBD.

Retention of lease—

Conditional notice of retention—Reduction of rent under ground lease—Landlord and Tenant (War Damage) Act 1939, ss 13, 14—Landlord and Tenant (War Damage) (Amendment) Act 1941, s 10. **Re Orbit Trust Ltd's Lease** [1943] 1 373, ChD.Notice of retention—Effect—Rent—Reduction of rent—Part of premises capable of beneficial enjoyment—Whether tenant entitled to reduction of rent as from date of damage or from date of service of notice—Landlord and Tenant (War Damage) Act 1939, ss 10(1)(b)(c), 15(5)—Landlord and Tenant (War Damage) (Amendment) Act 1941, s 2(5), Sch. **Reville v Prudential Assurance Co Ltd** [1944] 1 458, HL.

Short tenancy—

Determination—Destruction of premises by enemy action—No rent paid by tenant—House rebuilt by owner—Tenant's right to possession—Landlord and Tenant (War Damage) (Amendment) Act 1941, s 1(2). **Simper v Coombs** [1948] 1 306, KBD.Relief from obligation to pay rent where land unfit by reason of war damage—Whether act retrospective—Landlord and Tenant (War Damage) (Amendment) Act 1941, s 1. **Langford Property Co Ltd v Pajzs** [1943] 2 687, KBD.

Payments—

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Payments in respect of damage to land—

Administration of estate—

Capital or income. *See* Administration of estates (Capital or income—Settled leaseholds—War damage).

Contributions towards expenses of making payments—

Incidence of liability as between mortgagor and mortgagees—Separate mortgages of a number of properties—Whether mortgagee liable for share of contribution—Mortgage created 'in connection with...more than one contributory property'—War Damage Act 1941, s 25(4)(5). **Ideal Life Assurance Co Ltd v Hirschfield** [1943] 1 563, CA.Persons liable to pay instalments—Proprietary interest in contributory property subject to mortgage—No receiver at relevant date—Liability for instalment—War Damage Act 1941, s 27. **Re Ridley** [1943] 1 603, ChD.Proportion appropriate to a tenancy—Method of determining proportion—Proportion which rent reserved for period bears to contributory value of land—Annual payment of premium for term of lease—Premium in addition to rent reserved by the lease—Whether part of 'rent reserved'—War Damage Act 1943, s 50. **Re War Damage Act 1943, Samuel v Salmon & Gluckstein Ltd** [1945] 2 520, ChD.Proportion appropriate to a tenancy—Method of determining proportion—Proportion which rent reserved for period bears to contributory value of land—Payment in consideration of licence—Whether part of 'rent'—War Damage Act 1943, s 50. **Duke of Westminster v Store Properties Ltd** [1944] 1 118, ChD.

Cost of works payment—

Damage occurring as direct result of enemy action—Structural damage to defective walls—Reinstatement of building in pre-existing form—War Damage Act 1943, ss 2(1)(a), 6, 8(2), 10(1), Sch III, para 3(1). **Re 36, 38, 40, and 42 Jamaica Street, Stepney** [1947] 1 754, CA.Determination to pay cost of works instead of value payment—Right to make determination before repair work done—War Damage Act 1943, s 20(3)(b). **Paddington Borough Council v War Damage Commission, Associated London Properties Ltd v Paddington Borough Council** [1956] 3 753, CA.Making good war damage—Front wall of house damaged by enemy action—Party walls reinstated as part of work of reinstating front wall—Work executed to conform with London Building Acts—Whether cost of reinstating party walls to be included in cost of works payment—War Damage Act 1943, s 8(2). **Re 34 Bruton Street Westminster** [1957] 2 539, CA.

WAR DAMAGE (cont)

Payments in respect of damage to land (cont)—

Cost of works payment (cont)—

Making good war damage—Reconstruction of several buildings as single new building—Whether cost of works payment payable—War Damage Act 1943, s 8(3). **City of London Real Property Co Ltd v War Damage Commission** [1957] 1 519, CA.

Land—

Land including plant and machinery—Lamps and fittings used for lighting premises generally and not for trade purposes—Whether 'land' within the Act—War Damage Act 1943, s 103—Rating and Valuation Act 1925, s 24—Plant and Machinery (Valuation for Rating) Order 1927 (S R & O 1927 No 480), Sch, Class 1(b). **J Lyons & Co Ltd v Attorney-General** [1944] 1 477, ChD.

Notification by War Damage Commission of nature of payment—

Notification binding on War Damage Commission—War Damage Act 1943, s 7(1). **Re War Damage Act 1943, Re 56 Denton Road, Twickenham, Middlesex** [1952] 2 799, ChD.

Payment where partial damage to land not made good—

Discretion of War Damage Commission—Amount of payment—Payment of interest—War Damage Act 1943, s 13(1)(b). **Re Nos 102—107 Fetter Lane** [1950] 2 479, ChD.

Temporary works payment—

Works reasonably executed for temporarily meeting the circumstances created by the damage—Provision of alternative accommodation on the hereditament but away from site of damage—Permanent structures—War Damage Act 1943, s 6(2). **Re St Luke's Hospital, Chelsea** [1949] 1 990, CA.

Value payment—

Amount of value payment—Value after damage—Basis of valuation—Hypothetical sale—Restrictions affecting property—'Any restriction imposed...under an enactment...to which the hereditament was subject at the time immediately after the occurrence of the war damage'—War Damage Act 1943, s 10(1)(2), Sch II, para 1(1)(c)(iii). **Re City of London Real Property Co Ltd** [1949] 1 763, ChD.

Apportionment—Proprietary interest—'Incident' of proprietary interest—Option to lessee to purchase freehold reversion—War Damage Act 1943, s 12(3). **Re Johnston's Application** [1950] 1 613, ChD.

Interest—Income tax. **Inland Revenue Comrs v Bew Estates Ltd** [1956] 2 210, ChD.

Leasehold property—Administration of estate—Whether value payment to be treated as capital or income. **Re Scholfield (decd)** [1949] 1 490, ChD.

Right to receive payment—Proprietary interest—Short tenancy—Term of more than seven years under two instruments—Lease for five years extended to twelve years—War Damage Act 1943, s 123. **Re Nos 38, 29 and 40, Windmill Street, St Pancras, London** [1950] 1 59, ChD.

Redevelopment of land—

Compulsory purchase—

Order by Minister—Powers of Minister. **Robinson v Minister of Town and Country Planning** [1947] 1 851, CA.

Planning. *See* **Town and country planning** (War damage).

Value payment—

Income tax. *See* **Income tax** (Profits—Trading receipts—War damage value payments).

WAR INJURY

Aeroplane—

Fatal injury by aeroplane. *See* **Exclusion of right of action for damages—Exclusion of right where injury war injury—Fatal injury by aeroplane, post.**

Air-raid shelter—

Injuries sustained entering air-raid shelter. *See* **Exclusion of right of action for damages—Exclusion of right where injury war injury—Injuries sustained entering air-raid shelter after air-raid warning, post.**

Causation—

Test of causation—

Enemy unexploded incendiary bomb ignited and exploded by boy's tampering—Injury to child standing by—Personal Injuries (Emergency Provisions) Act 1939, ss 1, 8(1). **Minister of Pensions v Chennell** [1946] 2 719, KBD.

Civil defence volunteer—

Compensation. *See* **Compensation—Civil defence volunteer, post.**

Compensation—

Civil defence volunteer—

Injury arising 'out of and in the course of performance of duty'—Injuries sustained while proceeding to place of duty—Whether arising out of and in the course of performance of duty—Application of decisions under Workmen's Compensation Act—Personal Injuries (Emergency Provisions) Act 1939, s 8(1). **Minister of Pensions v Walton** [1946] 1 310, KBD.

Physical injury—Nervous debility—War injury—War service injury—Physical injuries excluding purely mental injuries—Physical injury, not being an organic disease, need not be traumatic in origin—Personal Injuries (Emergency Provisions) Act 1939, ss 1, 2, 8—Pensions (Mercantile Marine) Act 1942, s 5—Personal Injuries (Civilians) Scheme 1944 (S R & O 1944 No 369), Part IV, art 12(2)(a). **Re Haines** [1945] 1 349, KBD.

Physical injury—Shock on finding company officer hanging dead in station's store room—Resulting nervous debility—'War injury'—'War service injury'—Injury arising out of and in the course of performance of duty—'Physical injuries' excluding purely mental injuries—'Physical injury' need not be traumatic in origin—Shock resulting in immediate physical consequences 'physical injury'—Personal Injuries (Emergency Provisions) Act 1939, s 8. **Re Drake** [1945] 1 576, KBD.

WAR INJURY (cont)

Compensation (cont)—

Physical injury—

Organic disease and aggravation thereof—Artificial menopause resulting in highly nervous and hysterical condition—Nervous and hysterical condition aggravated by sight of bombed home—Hysteria functional disorder but not organic disease—Personal Injuries (Emergency Provisions) Act 1939, ss 1, 2, 8(1)(b)—Pensions (Mercantile Marine) Act 1942, s 5—Personal Injuries (Civilians) Scheme 1944 (S R & O 1944 No 369), Part IV, art 12(2). **Florence Young v Minister of Pensions** [1944] 2 308, KBD.

Exclusion of right of action for damages—

Exclusion of right where injury war injury—

Engine-driver killed by reason of bomb crater on track—Whether direct and substantial connection between enemy act and injury—Whether action barred—Personal Injuries (Emergency Provisions) Act 1939, ss 3(1), 8. **Greenfield v London & North Eastern Ry Co** [1944] 2 438, CA.

Fatal injury by aeroplane—Case unprovided for by scheme—Partial dependency—Funeral expenses—Claim in trespass—Whether 'war injury'—Whether claim barred—Personal Injuries (Emergency Provisions) Act 1939, ss 3, 8—Personal Injuries (Civilians) Scheme 1944 (S R & O 1944 No 369), arts 1(8), 29. **Billings v Reed** [1944] 2 415, CA.

Injuries sustained entering air-raid shelter after air-raid warning—Air raid shelter steps uneven, inadequately lighted and no centre hand rail—Whether injuries 'war injuries' or due to nonfeasance by local authority—Whether right of action against local authority barred—Personal Injuries (Emergency Provisions) Act 1939, s 8. **Baker v Bethnal Green Corp** [1945] 1 135, CA.

Minefield on foreshore—Injuries to children by exploded mines—Whether injury 'caused by the use of explosive in combating enemy'—Personal Injuries (Emergency Provisions) Act 1939, ss 3, 8—Personal Injuries (Civilians) Scheme 1941 (S R & O 1941 No 226). **Adams v Naylor** [1946] 2 241, HL.

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Injury sustained by passenger in aircraft—Injury sustained abroad, *post*.

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Merchant seaman fatally injured by army vehicle travelling in convoy—In combating the enemy—Restricted interpretation—Actual or imagined engagements with enemy—Fatal injury not due to 'any other injurious act ... in combating the enemy'—Personal Injuries (Emergency Provisions) Act 1939, s 3—Pensions (Navy, Army, Air Force and Mercantile Marine) Act 1939, s 10. **Re Kemp** [1945] 1 571, KBD.

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Attributability of injury to war service or aggravation thereby—Benefit of any reasonable doubt to be given to claimant—Whether criminal standard of proof requisite—Royal Warrant Concerning Retired Pay, Pensions, etc 1949, (Cmd 7699), art 4(2). **Judd v Minister of Pensions and National Insurance** [1966] 3 642, QBD.

Attributability of injury to war service or aggravation thereby—Disease of unknown aetiology—Principles which should guide tribunals when considering a claim based on such a disease—Royal Warrant Concerning Retired Pay, Pensions etc 1949, (Cmd 7699), art 4(2)(3). **Coe v Minister of Pensions and National Insurance** [1966] 3 172, QBD.

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Burden of proof (cont)—

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Civilians scheme—Causation of disablement—Claim made more than seven years after the date on which the war injury was sustained—Onus of proof on claimant—Benefit of reasonable doubt whether disablement was caused by war injury to be given to claimant—Personal Injuries (Civilians) Scheme 1964, (S I 1964 No 2077), art 5(3). **Cadney v Minister of Pensions and National Insurance** [1965] 3 809, QBD.

Death due to or substantially hastened by injury attributable to war service—Death more than seven years after termination of war service—Royal Warrant concerning Retired Pay, Pensions, etc 1949, (Cmd 1949 No 7699), art 5(2). **Dickinson v Minister of Pensions** [1952] 2 1031, QBD.

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Disablement—

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Injury attributable to conditions abnormal in time of peace—Construction—Ejusdem generis rule—Pensions (Mercantile Marine) Act 1942, s 1(2)(d)—War Pensions (Naval Auxiliary Personnel) Scheme 1944, (S R & O 1944 No 499), Sch 1(2)(d). **Minister of Pensions v Higham** [1948] 1 863, KBD.

Injury attributable to conditions abnormal in time of peace—Service in cable ship on Iceland station—Complaint of tinned food and bad living conditions—Pensions (Mercantile Marine) Act 1942, s 1(2)(d). **Staynings v Minister of Pensions** [1947] 1 347, KBD.

Injury sustained at sea or in any other tidal water or in waters of any harbour—Coastguard employed at look-out hut on sea point—Whether propinquity to sea, tidal water or harbour sufficient for pension entitlement—Pensions (Mercantile Marine) Act 1942, s 1(2)—War Pensions (Coastguards) Scheme 1944, (S R & O 1944 No 500). **Minister of Pensions v Nugent** [1946] 1 273, KBD.

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Burden of proof—Minister's reasons embodying medical opinion—Medical opinion conclusive only if authenticated by medical man—'Evidence'—Pensions Appeal Tribunals Act 1943, s 1, Schedule, para 5(2)(3)—Pensions appeal tribunals (England and Wales) Rules 1943, (S R & O 1943 No 1757), rr 12(6), 13, 14, 15, 16—Royal Warrant concerning Retired Pay, Pensions, etc 1943, (Cmd 1943 No 6489), art 4(1)(2)(3). **Starr v Minister of Pensions** [1946] 1 400, KBD.

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Procedure—

Request for opinion of medical specialist—Medical history sent by tribunal to specialist—Matters included unconnected with disease on which claim based—Propriety. **Jackson v Minister of Pensions** [1946] 2 500, KBD.

Request for opinion of medical specialist—Report favourable to claimant—Minister obtaining report of independent medical expert—Tribunal's rejection of claim based on report to Minister—Validity of procedure—Pensions Appeal Tribunals (England and Wales) Rules 1946, (S R & O 1946 No 1708), r 15(2)(3)—Royal Warrant concerning Retired Pay, Pensions, etc 1949, (Cmd 1949 No 7699), art 4(2). **Sharp v Minister of Pensions** [1950] 2 1012, KBD.

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Respondents. **Practice Note** [1962] 1 156, ChD.

Respondent where minor in care of local authority. **Re L (an infant)** [1963] 1 176, ChD.

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Practice—Relationship of applicant to ward to be stated—RSC Ord 91, r 1(3). **Practice Direction** [1967] 1 828, ChD.

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Procedure. **Practice Direction** [1972] 1 797, FamD.

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Application made to stultify adoption proceedings brought by another party—Extent to which court will consider pending adoption proceedings in determining care and control. **Re F (an infant)** [1970] 1 344, CA.

Contest between natural parent and remoter relative—Father and maternal grandmother—Application of grandmother for care and control of deceased daughter's child—Application opposed by father—Child's parents divorced before mother's death—Mother given custody of child—Mother and child living with grandparents before mother's death—Father having illegitimate child by another woman—Father and other woman marrying—Grandmother hostile to father—Whether in circumstances care and control of child should be awarded to grandmother. **Re F (a minor)(wardship: appeal)** [1976] 1 417, CA.

Religion—Illegitimate infant, baptised in Roman Catholic faith, placed for adoption with non-Roman Catholic family—Mother then decided infant should be placed for adoption by a Roman Catholic family and withdrew consent to proposed adoption—Adoption order refused—Application by former proposing adopters to make infant ward of court and for care and custody—Motion by mother to de-ward infant and dismiss application—Wardship continued, in the circumstances, and custody given to former proposing adopters on their undertaking that infant should be brought up in Roman Catholic faith. **Re E (an infant)** [1963] 3 874, ChD.

Wishes of unimpeachable parent—Child of tender years—Mother committed adultery, and left home on account of another man—Father's conduct unimpeachable—Father able to provide suitable surroundings for child—Whether father entitled to care and control. **Re L (infants)** [1962] 3 1, CA.

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Application dismissed by magistrates save as to custody of infant and maintenance for infant—Reasonable access by father ordered—Access in fact afforded by mother unsatisfactory—Application by father by originating summons to make ward of court and for directions as to care and control of infant—Father's application was misconceived—Proper course was to apply to magistrates for more specific order relating to access. **Re K (K J S) (an infant)** [1966] 3 154, ChD.

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Alien children of American parents—Dissolution of marriage in Mexico—Custody of children given to mother with liberal access by father—Consent order for children to remain in and under control of the State of New York—Wife's removal of children to England—Consent of court and father not sought—Order by New York State court to return children there—Children made wards of court in England by mother—Whether children should be returned to State of New York in custody of father—Whether judge bound to make full inquiry into merits. **Re H (infants)** [1966] 1 886, CA.

Ordinary residence giving jurisdiction—Parents stateless persons ordinarily resident in England—Parents living apart—Child lived with mother—Father took child to Israel without consent of mother—Child remained ordinarily resident in England—Whether wardship jurisdiction extended to child. **Re P (G E) (an infant)** [1964] 3 977, CA.

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Factors relevant to determination of forum—Italian mother and English father of minor—Separation order made by consent by Italian court giving father custody of minor—Father brought minor to England—Application by mother for care and control of minor and liberty to take him to Italy—Duty of English court to consider best interests of minor. **Re Kernot (an infant)** [1964] 3 339, ChD.

Interim care and control—Divorce proceedings commenced in Scotland—Interim order in Scotland awarding custody—Wardship proceedings commenced in England—Whether investigation should take place in England or Scotland. **Re G (an infant)** [1969] 2 1135, ChD.

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Interlocking of court's inherent jurisdiction with statutory jurisdiction of local authority having child in care—Child remaining in care of local authority and also a ward of court—Access—Form of order—Children Act 1948, s 1(3). **Re G (infants)** [1963] 3 370, ChD.

Jurisdiction to make order for protection of minor before commencement of wardship proceedings—Need of application to make infant a ward of court—Law Reform (Miscellaneous Provisions) Act 1949, s 9(1)—RSC Ord 54P, r 1. **Re E (an infant)** [1955] 3 174, ChD.

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Interim injunction—Originating process not yet issued—Whether inherent jurisdiction to grant injunction before issue of originating process restricted by Law Reform (Miscellaneous Provisions) Act 1949, s 9. **Re N (infants)** [1967] 1 161, ChD.

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Foreign children—Removal of children from foreign jurisdiction by one parent—Order to return children to custody of parent in foreign jurisdiction—Summary order without investigating merits—Circumstances in which summary order will be made—Welfare of child—Interest of child in being returned to natural environment without delay—Conduct of parent in removing child from foreign jurisdiction a factor to be considered—Expectation that dispute over custody would be satisfactorily resolved by foreign court. **Re L (minors) (wardship: jurisdiction)** [1974] 1 913, CA.

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Order to bring wards within jurisdiction—Jurisdiction of court—Writ of sequestration—Enforcing order against British subject domiciled in England resident abroad. **Re Liddell's Settlement Trusts** [1936] 1 239, CA.

Protection of ward—

Freedom of publication—Publication of matter likely to be harmful to ward—Jurisdiction of court to restrain publication—Ward a schoolgirl of 14—Ward psychologically fragile and highly strung—Ward's father dead—Defendants proposing to publish book describing father's depraved sexual activities—Book likely to be seen by ward—Public interest in freedom to publish true information—Whether court having jurisdiction to restrain publication—Whether order should be made. **Re X (a minor) (wardship: restriction on publication)** [1975] 1 697, FamD.

Fundamental rights of ward—Right of woman to reproduce—Sterilisation operation—Non-therapeutic reasons for operations—Ward a mentally retarded girl—Proposal to perform operation to sterilise girl—Operation irreversible—Fear that girl might be seduced and give birth to mentally abnormal child—Operation advised by consulting paediatrician in charge of girl's case—Girl's parent consenting to operation—Girl incapable of giving informed consent to operation—Girl having sufficient intellectual capacity to enable her to marry in due course and to make her own choice whether to be sterilised—Whether court should exercise wardship jurisdiction to prevent operation. **Re D (a minor) (wardship: sterilisation)** [1976] 1 326, FamD.

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Minors in charge of local authority under fit person order—Father having custody—Summons by mother to make minors wards of court—Forum conveniens—Magistrates' order to be reconsidered in magistrates' court unless relief sought which magistrates unable to give. **Re P (infants)** [1967] 2 229, ChD.

Removal of minors from jurisdiction—Mother having custody under magistrates' order—Motion by mother to restrain father from removing minor from jurisdiction—Order of High Court in exercise of prerogative jurisdiction not inconsistent with order of magistrates. **Re H (G J) (an infant)** [1966] 1 952, ChD.

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Leave to take ward out of jurisdiction—Factors to be considered—Bi-racial marriage—Infant son and infant daughter of Sudanese father and English mother—Matrimonial home intended at time of marriage to be in Sudan—Children subsequently brought to England by mother—Whether father should have liberty to take them or either back to the Sudan—Guardianship of Infants Act 1925, s 1. **Re O Infants** [1962] 2 10, CA.

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Statutory defence—Prosecution for sale of food not of substance demanded. *See* **Food and drugs** (Sale—Not of substance demanded—Defence—Warranty by supplier).

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Cleansing of watercourse—

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Flooding—**Protection of land from flooding—**

Wall erected by riparian owner to protect own land—Wall removed and re-erected leaving gaps—Land of adjoining owners damaged by flood—Whether riparian owner liable. **Thomas & Evans Ltd v Mid-Rhondda Co-operative Society Ltd [1940] 4 357, CA.**

Flow of water—**Mill deriving water power from river—**

Interference with flow of water by local authority executing works under statutory powers—Whether reasonable steps to avoid interference—Onus of proof. **Provender Millers (Winchester) Ltd v Southampton County Council [1939] 4 157, CA.**

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Mill deriving water power from river—

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Public right to navigate tidal waters—

Quay on foreshore—Quay within port—Right of public to use quay for purposes incidental to navigation on payment of reasonable charge—Whether defendant, as member of public, entitled to use quay for repairing boats on payment of reasonable charge. **Iveagh (Earl) v Martin [1960] 2 668, QBD.**

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Overflow of polluted water from tanks by side of river—Tanks and equipment under control of accused—Reasonable care by accused to prevent overflow—No intervening act of third party—Whether escape of polluting matter caused by accused—**Rivers (Prevention of Pollution) Act 1951, s 2(1). Alphacell Ltd v Woodward [1972] 2 477, HL.**

Positive act required—Landowner allowing polluting matter to accumulate on his land—Polluting matter collected in lagoons on land—Crack in walls of lagoon—Polluting matter escaping through crack into nearby river—Whether landowner having caused polluting matter to enter river—**Rivers (Prevention of Pollution) Act 1951, s 2(1). Price v Cromack [1975] 2 113, QBD.**

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Consent of river authority—Application for consent granted subject to conditions—Less stringent conditions for initial period—Whether variation of conditions to consent possible—**Rivers (Prevention of Pollution) Act 1961, ss 1(4), 5(2), Sch 1. Trent River Authority v F H Drabble & Sons Ltd [1970] 1 22, QBD.**

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Action by riparian owner and fishery owner against local authority—Right of action against local authority—**Rivers Pollution Prevention Act 1876, s 3—Derby Corporation Act 1901, ss 109(1), 113. Pride of Derby and Derbyshire Angling Assn Ltd v British Celanese Ltd [1953] 1 179, CA.**

Reservoir—**Surface water collected in reservoir on owner's land—**

Water not taken from natural watercourse—Water taken from reservoir for spray irrigation of land—Owner's right to use water in reservoir. **Rugby Joint Water Board v Walters [1966] 3 497, ChD.**

WATER AND WATERCOURSES (cont)

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Seashore—

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WATER AUTHORITY

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WATER CLOSET

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Byelaw—

Validity. *See* **Byelaw** (Validity—Byelaw requiring a builder constructing a closet to secure that it should not be entered from a room used for human habitation).

WATER RATES

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WATER SUPPLY

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Joint board—

Agreement to acquire land by constituent authority before board constituted—Whether enforceable under Bucks Water Act 1937, s 38. **Bedford (Duke) v Bucks Water Board** [1938] 1 199, ChD.

Buildings over mains. *See* **Water mains**—Buildings over mains, *post*.

Charges—

Power of water authority to make charges—

Charges for services performed—Liability of person who has not received services—Power of water authority to make such charges for services performed, facilities provided or rights made available by them as they think fit—Sewerage services—Occupier of house—House not connected to public sewers—Occupier not receiving sewerage services—Whether water authority having power to impose charge on occupier for sewerage services provided by the authority in their area—Water Act 1973, s 30(1). **Daymond v South West Water Authority** [1976] 1 39, HL.

Power to levy charge for supply of water for non-domestic purposes—

Washing motor cars—Charge levied on registered owners of all cars in supply area—Burden on owner to show that no water supplied by undertakers used in respect of his car—Validity of procedure for levying charge—Whether ultra vires the undertakers—Leeds Corporation (Consolidation) Act 1905, s 24. **Attorney-General v Leeds Corp'n** [1952] 1 7, ChD.

Domestic purposes. *See* **Supply of water for domestic purposes**, *post*.

Duty of statutory water undertakers—

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Valve-box in roadway—Cover-plate left open by person unknown—No danger when cover closed—Liability of undertakers for injury to pedestrian. **Wells v Metropolitan Water Board** [1937] 4 639, KBD.

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Nature of interest vested in local authority—Fee simple absolute or determinable estate—Liability to maintain works—Supply ceasing to be a public supply—Whether local authority's liability to maintain works having determined—Public Health Act 1936, s 124(1). **Gilson v Kerrier Rural District Council** [1976] 3 343, CA.

Purpose of supply—Supply for purpose other than for human consumption—Whether works used for supply of water for any purpose vested in local authority—Whether limited to works used for supply of drinking water—Public Health Act 1936, s 124(1). **Gilson v Kerrier Rural District Council** [1976] 3 343, CA.

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WATER SUPPLY (cont)

- Power to obtain water outside water district of corporation—
 - Pumping station situated outside water district—
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- Powers of statutory water undertakers—
 - Power to pay interest from revenue on money borrowed—
 - Power to borrow for payment of interest on money borrowed out of capital—Whether power to borrow interest already paid out of revenue—**West Cheshire Water Board Act 1925**, s 83—**West Cheshire Water Board Act 1927**, ss 41(1)(c), 46(1)(d). **West Cheshire Water Board v Crowe** [1940] 2 351, KBD.
- Sale of land—
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 - Domestic purposes—
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 - Duty of undertakers as respects sufficiency and purity—
 - Infected water—Remedies available to person injured thereby—Water infected by typhoid bacillus—Infant plaintiff contracting typhoid—Negligence—Breach of contract—Sale of goods—Breach of warranty—Breach of statutory duty—Nuisance—Sale of Goods Act 1893, s 14—**Waterworks Clauses Act 1847**, s 35—**Public Health Act 1936**, ss 111, 115. **Read v Croydon Corpn** [1938] 4 631, KBD.
 - Water pure while in mains—Water dissolving lead—Whether breach of statutory duty—Common law duty to warn persons supplied. **Barnes v Irwell Valley Water Board** [1938] 2 650, CA.
 - Duty of undertakers to provide domestic supply to new buildings—
 - Duty on request by owner of land on which buildings to be erected—Power of undertakers to require owner to make contribution to cost of laying necessary mains—'Necessary mains'—Meaning—Request by landowner for supply of water to new houses—Construction of trunk main necessary to bring water to houses—Trunk main required for purpose of supplying water to existing consumers in addition to proposed new houses—Right of undertakers to require council to make contribution to cost of laying trunk main—**Water Act 1945**, s 37 (as amended by the **Water Act 1948**, s 14(4), and the **Housing Act 1949**, s 46). **Cherwell District Council v Thames Water Authority** [1975] 1 763, HL.
 - Duty of undertakers to provide domestic supply to new buildings—
 - Duty on request of owner of land on which buildings to be erected. Power of undertakers to require owner to make contribution to cost of laying necessary mains—'Necessary mains'—Meaning—Request by landowner for supply of water to new houses—Construction of trunk main necessary to bring water to houses—Trunk main required for purpose of supplying water to existing consumers in addition to proposed new houses—Right of undertakers to require council to make contribution to cost of laying trunk main—**Water Act 1945**, s 37 (as amended by the **Water Act 1948**, s 14(4), and the **Housing Act 1949**, s 46). **Cherwell District Council v Thames Water Authority** [1975] 1 763, HL.
- Right of owner or occupier of premises to demand supply—
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- Turning off supply—
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 - Liability of water company—Request to water company to turn off water—Company assenting to request and turning off tap in street outside premises—Tap turned on by third person and house flooded—Whether water company liable. **Watson v Sutton District Water Co** [1940] 3 502, CA.
- Upkeep of fittings. *See* Duty of statutory water undertakers—Upkeep of fittings, *ante*.
- Water company—
 - Liability for turning off supply. *See* Turning off supply—Damage—Liability of water company, *ante*.
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 - Buildings purchased by defendants without knowledge of existence of mains—Right of local authority to order for demolition—**Waterworks Clauses Act 1847**, ss 20, 21—**Public Health Act 1875**, s 26—**Public Health Act 1875** (Support of Sewers) Amendment Act 1883, s 3—**Public Health Act 1936**, s 25. **Abingdon Borough Council v James** [1940] 1 446, ChD.
- Water rates—
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 - Allowance for early payment—Right to allowance—**Waterworks Clauses Act 1847**, s 72—**Public Health Act 1936**, s 129(1)(2), s 328. **Sowerby Bridge Urban District Council v Stott** [1956] 2 264, CA.

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Water rates (cont)—

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Summary recovery—Order by court of summary jurisdiction for payment—Direction to levy distress in default of payment—'Final order' against debtor—Whether precluding issue of bankruptcy notice. **Re a Debtor (No 48 of 1952)**, ex parte **Amphill Rural District Council v The Debtor** [1953] 1 545, CA.

Reduction of rates—

Special expense charged on ratepayers in contributory place—Cost of supply to that place thereafter small—Right of ratepayers in that place to have rate reduced to reflect cost—Public Health Act 1936, s 126(1). **Border Rural District Council v Roberts** [1950] 1 370, CA.

Right to charge—

Water board's main in village street—Ancient right to water from stand-pipes free of charge—Houses connected to main by pipes—Whether board entitled to charge—Public Health Act 1936, s 124(1)—Water Act 1945, Sch III, s 46(1). **South Devon Water Board v Gibson** [1955] 2 813, CA.

Waterworks—

Duty of undertakers to reinstate streets etc after execution of work—

Degree of reinstatement required—Defective apparatus in street—Injury to plaintiff—Liability of undertakers—Waterworks Clauses Act 1847, s 32. **Withington v Bolton Borough Council** [1937] 3 108, KBD.

Duty of undertakers to reinstate streets etc after execution of work—

Extent of obligation—Damage due to defective water-pipe—Duty to reinstate and repair road confined to portion taken up—Waterworks Clauses Act 1847, s 32. **Longhurst v Metropolitan Water Board** [1948] 2 834, HL.

Duty of undertakers to reinstate streets etc after execution of work—

Work of reinstatement taken over by highway authority—Damage due to negligent reinstatement—Liability of undertaker—Waterworks Clauses Act 1847, s 32—Metropolis Management Act 1855, s 114. **Rider v Metropolitan Water Board** [1949] 2 97, KBD.

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WEIGHTS AND MEASURES

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Deficiency in weight—

Ascertainment of deficiency—Inconsiderable variation—Wrapped sliced loaf—Bread Order 1953 (S I 1953 No 1283), art 2, art 3(1) (2)(a) (b). **Trickers (Confectioners) Ltd v Barnes** [1955] 1 803, QBD.

Possession for sale of bread which is under weight—Loaves in despatch area of bakery deficient in weight—Stale bread not for sale also in despatch area—Notice displayed that no bread was for sale until passed by bread despatch supervisor—Whether bread in despatch area that had not been so passed was in 'possession for sale'—Weights and Measures Act 1963, s 22(2)(a). **Ben Worsley Ltd v Harvey** [1967] 2 507, QBD.

Precautions to ensure correct weight—Whether every precaution taken to ensure that loaves of bread of correct weight—Whether deficiency of weight due to bona fide mistake or accident—Sale of Food (Weights and Measures) Act 1926, s 6(2). **Marshall v Matthews** [1939] 1 156, KBD.

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Ingredients of offence—Necessity for mens rea—Exposure of coal in sacks for sale—Representation by seller as to weight—Deficiency in weight owing to theft by servant—Whether seller guilty of offence—Weights and Measures Act 1889, s 29(2)—Sale of Food (Weights and Measures) Act 1926, s 12(5). **Winter v Hinckley & District Industrial Co-operative Society Ltd** [1959] 1 403, QBD.

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Bye-law—Provision of stamped weighing instrument on delivery vans—Validity of bye-law—Weights and Measures Act 1889, s 28. **William Bridge Ltd v Harrison** [1941] 3 236, KBD.

Defence to proceedings—

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'Cause beyond his control'—Machine—Short weight—Short weight caused by unanticipated fault in operation of machine owned by defendant—Bag of potato crisps—Bag under weight—Liability of manufacturers—Bags filled by machine—Manufacturers' machines best available for purpose—No machine sufficiently accurate to produce no underweight bags—Economically impossible to weigh each bag manually—Machine for no anticipated reason failing to be accurate—Whether short weight due to cause beyond control of manufacturers—Weights and Measures Act 1963, s 26(1). **Bibby-Cheshire v Golden Wonder Ltd** [1972] 3 738, QBD.

Offence committed by servant or agent—Availability of defence to principal—Weights and Measures Act 1963, s 26(1)(a). **Hall v Farmer** [1970] 1 729, QBD.

Evidence—

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Pre-packed goods. *See* Pre-packed goods—Short weight—Evidence, *post*.

Misrepresentation as to quantity of goods—

Misrepresentation by word of mouth or otherwise—

Ingredients of offence—Weight of bacon less than weight entered in customer's book—Whether a 'misrepresentation'—Sale of Food (Weights and Measures) Act 1926, s 3. **Preston v Coventry and District Co-operative Society Ltd** [1946] 1 694, KBD.

Misrepresentation in connection with sale of goods—

Sale of milk by farmer to marketing board—Resale by board to dairy—Milk delivered by farmer direct to dairy—No contract between farmer and dairy—Misrepresentation by dairy to farmer as to quantity received—Whether misrepresentation must be to contractual party—Weights and Measures Act 1963, s 24(2). **Collett v Co-operative Wholesale Society Ltd** [1970] 1 274, QBD.

Mistake as a defence to proceedings. *See* Defence to proceedings—Mistake, accident or some other cause beyond defendant's control, *ante*.

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Prepacked—

Meat exposed for sale on bit of paper slightly larger than piece of meat—Whether the bit of paper was 'packaging'—Whether the meat was prepacked goods—Weights and Measures Act 1963, ss 22(1), 58(1), Sch 4, Part 1, para 2(a). **Lucas v Rushby** [1966] 2 302, QBD.

Short weight—

Deficiency occurring after making up or making of goods for sale—Availability of defence to retailer—Weights and Measures Act 1963, s 26(2). **F W Woolworth & Co Ltd v Gray** [1970] 1 953, QBD.

Evidence—Admission by agent—Admissibility—Prima facie evidence that agent authorised to speak on behalf of company. **Edwards v Brookes (Milk) Ltd** [1963] 3 62, QBD.

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 - Option to purchase granted by testator after date of will—Exercise of option after testator's death—Gift *inter vivos*—Gift of shares in private company if such shares not transferred to legatee 'previously to my death'—Transfer executed by testator during his lifetime—Refusal of directors to register transfer until after testator's death. **Re Rose (decd)** [1948] 2 971, ChD.
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Adverse evidence of attesting witnesses—Admissibility of further evidence—Wills Act 1837, s 9. *Re Vere-Wardale (decd)* [1949] 2 250, Prob.

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Gift of freehold property after death of testator's widow—Gift subject to payment of £800 to testator's estate within 6 months of testator's death—Whether time specified of the essence of the matter. **Re Goldsmith's Will Trusts** [1947] 1 451, ChD.

Option to purchase freehold property—Option to be exercised within 3 months after death of testatrix's sister—Time of performance—Time specified of essence of matter. **Re Avarad** [1947] 2 548, ChD.

Vesting—Direction as to time of payment—Payment at future date—Contingent or vested gift—Postponement of payment derived from necessity of letting in prior interest—Vested gift subject to postponement of enjoyment—Gift to be construed as vested unless something in will to preclude construction. **National Westminster Bank Ltd v Cohn** [1974] 3 928, CA.

Continuance in employment—

Condition that legatee still employed at testator's death and not under notice—Military service—Continuation of employment—Gift of residue to 'legatee hereinbefore named'—Whether legatee subject to unfulfilled condition entitled to participate—Whether annuitant included in direction as to distribution of residue. **Re Feather** [1945] 1 552, ChD.

Gift to housekeeper if she continued in service of testatrix's husband—Marriage between husband and housekeeper. **Re Kendrew (decd)** [1953] 1 551, CA.

Divesting—

Divesting 'if the trusts of cl 6(i) shall come into operation'. **Doughty v Inland Revenue Comrs** [1963] 3 848, CA.

Family matters—

Adoption of testator's daughter—Failure to obtain adoption order—Whether failure of gift for non-compliance with condition—Trust for maintenance. **Re Frame** [1939] 2 865, ChD.

Condition encouraging separation of parent and child—Public policy—*Malum prohibitum*. **Re Piper** [1946] 2 503, ChD.

Condition encouraging violation of the sanctity of marriage—Absolute gift cut down during lifetime of donee's wife with gift over if wife survives donee—Donee separated from wife by agreement before death of testatrix—Whether condition or limitation. **Re Caborne** [1943] 2 7, ChD.

Condition encouraging violation of the sanctity of marriage—Small annual sum to be paid to daughter during her life out of income of residuary estate—Whole income of residuary estate payable to her if her husband died or they should be divorced or live separately—Whether condition or limitation and whether condition void. **Re Johnson's Will Trusts** [1967] 1 553, ChD.

Condition inducing future separation of spouses—Public policy—Construction of condition. **Re Thompson** [1939] 1 681, ChD.

Illegal condition—

Condition precedent—Gift of personalty subject thereto—*Malum prohibitum* and not *malum in se*—Validity of gift. **Re Elliott (decd)** [1952] 1 145, ChD.

Impossibility of performance—

Charitable bequest—Gift over on failure of trustees to carry out trust—Subsequent impossibility for trustees to perform trusts—Operation of gift over. **Re Hanbey's Will Trusts** [1955] 3 874, ChD.

Trust to provide village hall—Site to be purchased by will trustees and conveyed to institute trustees—Institute trustees responsible for building hall—If hall not completed within specified time, site to be sold and gift to lapse—Gift over—Inability of will trustees to purchase site. **Re Jones** [1947] 2 716, ChD.

Name and arms clause—

Clause extending to husband of married woman—'Actual receipt of rents and profits'—Specific devise—Administration not yet completed. **Re Neeld (decd)** [1962] 2 335, CA.

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Condition (cont)—

Name and arms clause (cont)—

Clause extending to married women and their husbands—Public policy—Severance of condition—Commencement of period from which time began to run—Acceleration of life interests by release of previous life interest. **Re Howard's Will Trusts** [1961] 2 413, ChD.

Determination of interest on 'neglect' for 12 months to take name and arms of testator—Non-compliance with condition owing to ignorance of terms of will—Whether breach of condition. **Re Hughes** [1943] 2 269, ChD.

Discontinue to bear and use. **Re Wood's Will Trusts** [1952] 1 740, ChD.

Disuse. **Re Bouverie (decd)** [1952] 1 408, ChD.

Female beneficiary required to bear testator's surname—Beneficiary not directly related to testator—No gift over on breach of condition—Rule against perpetuities—Public policy. **Re Fry** [1945] 2 205, ChD.

Gift on condition that donee should 'by deed poll assume' a different Christian name—Gift over if condition not fulfilled—Condition void for impossibility—Donee absolutely entitled to gift. **Re Parrott's Will Trusts** [1946] 1 321, ChD.

Quarter with own family arms—Devisee to quarter testator's arms with 'his or her own family arms'—Whether 'family arms' includes arms acquired by direct grant and after clause in will has taken effect—Whether devisee with no arms must get them so as to have arms with which quarter testator's. **Re Neeld (decd)** [1969] 2 1025, ChD.

Severance. **Re Howard's Will Trusts** [1961] 2 413, ChD.

Tenant for life to 'assume' testator's surname—Assumption 'either alone or in substitution of his... usual surname'—Tenant for life to 'apply for proper authority to bear and use' testator's family arms—Interest to be determined on refusal or neglect to assume surname or arms within one year of becoming entitled. **Re Murray (decd)** [1954] 3 129, CA.

Use and bear the surname and arms. **Re Howard's Will Trusts** [1961] 2 413, ChD.

Provision of home—

Devise and bequest to one daughter 'on condition that she will always provide a home' for another daughter. **Re Brace (decd)** [1954] 2 354, ChD.

Religion—

Condition excluding beneficiaries who married 'out of the Jewish faith'—Whether condition void for uncertainty. **Re Selby's Will Trusts** [1965] 3 386, ChD.

Condition in terrorem—'Conform to the Established Church of England'—'Go to or be sent to any Roman Catholic school'—Validity. **Re Tegg** [1936] 2 878, ChD.

Devise to person 'who shall be a member of the Church of England and an adherent to the doctrine of that church'. **Re Allen (decd)** [1953] 2 898, CA.

Devise to person 'who shall be a member of the Church of England and an adherent to the doctrine of that church'—Date at which qualification must be satisfied. **Re Allen (decd)** [1954] 1 526, ChD.

Endowment of medical studentship—Students not to be of the Jewish or Roman Catholic faith—Not contrary to public policy—Not void for uncertainty. **Re Lysaght (decd)** [1965] 2 288, ChD.

Forsaking Jewish faith—Event to be proved to satisfaction of trustees—Perpetuity. **Re Spitzel's Will Trusts** [1939] 2 266, ChD.

Gift on marriage to person of 'Jewish race'—Validity. **Re Tarnpolsk (decd)** [1958] 3 479, ChD.

Gift over if daughter should marry a person who did not 'practise the Jewish religion'. **Re Krawitz's Will Trusts** [1959] 3 793, ChD.

Impossibility of condition—Gift of fund 'on marriage to a person of the Jewish faith and the child of Jewish parents'—Failure of gift. **Re Wolfe's Will Trusts** [1953] 2 697, ChD.

Intermarry with any person not a member of the Jewish faith—Uncertainty. **Re Moss's Trusts** [1945] 1 207, ChD.

Jewish faith—Uncertainty. **Re Donn's Will Trusts** [1942] 2 564, ChD.

Marriage with a person who is not of Jewish parentage and of the Jewish faith—Uncertainty. **Clayton v Ramsden** [1943] 1 16, HL.

Marry person not of Jewish faith—Uncertainty. **Re Blaiberg** [1940] 1 632, ChD.

Power of appointment exercisable by trustees in event of testator's son 'becoming engaged to be married to a person professing the Jewish faith'—Son married lady whom trustees considered to profess Jewish faith—Exercise of power of appointment so as to settle whole of son's share in testator's residuary estate. **Re Abrahams' Will Trusts** [1967] 2 1175, ChD.

Proviso for forfeiture of share of testator's residuary estate if not 'member of the Church of England or some Church abroad professing the same tenets'—Proviso not void for uncertainty—Methodist Church of Australia not a church abroad professing same tenets as Church of England. **Re Mills' Will Trusts** [1967] 2 193, ChD.

Residence—

Devisee to make estate his home—Not to allow a named person to set foot on property. **Re Talbot-Ponsonby's Estate** [1937] 4 309, ChD.

Direction by the testator that payments be made to his daughter 'only so long as she shall continue to reside in Canada'—Impossibility of determining what future conduct would fall within the terms of the will—Void for uncertainty. **Sifton v Sifton** [1938] 3 435, PC.

Gift of dwelling-house—'if in the opinion of my trustees she shall have ceased permanently to reside therein'—Meaning of 'reside'. **Re Coxen (decd)** [1948] 2 492, ChD.

Gift of house for life subject to residence—Sum settled for outgoings during life of tenant—Gift over—Prohibition against exercise of power of sale—Settled Land Act 1925, s 106(1). **Re Burden (decd)** [1948] 1 31, ChD.

WILL (cont)

Condition (cont)—

Residence (cont)—

Gift of house on trust for sister for life—Gift over to testator's housekeeper 'provided she is living with my sister at the time of my sister's death'—Housekeeper living in the same house, but entirely apart from sister, at time of sister's death. **Re Paskins' Will Trusts** [1948] 2 156, ChD.

Take up permanent residence in England. **Re Gape's Will Trusts** [1952] 2 579, CA.

To J 'if he shall occupy my freehold property'. **Re Field's Will Trusts** [1950] 2 188, ChD.

Restraint of marriage—

Motive—Construction of words of futurity. **Re Fentem (decd)** [1950] 2 1073, ChD.

Partial restraint—Gift of personality to widow provided she remain a widow—No gift over on remarriage. **Leong v Lim Beng Chye** [1955] 2 903, PC.

Remarriage—Bequest of protected life interest in testatrix' residuary estate to deceased daughter's husband for so long as he should remain daughter's widower—Nullity decree obtained by second wife—Residuary estate and income retained by trustees of will—Whether deceased daughter's husband entitled to life interest until marrying again. **Re d'Altroy's Will Trusts** [1968] 1 181, ChD.

Specific conditions—

'Entitled to interest'—Whether meaning entitled to vested interest. **Re Macandrew's Will Trusts** [1963] 2 919, ChD.

Executors to be satisfied that hospital not taken over by state—Validity of executors' decision. **Dundee General Hospitals Board of Management v Walker** [1952] 1 896, HL.

Forfeiture upon acceptance of public office—Commission in Territorial Forces—Public policy. **Re Edgar** [1939] 1 635, ChD.

Gift 'in the event of an armistice having been concluded between Great Britain and Germany in the present war before the date of my death'. **Re Orchard (decd)** [1948] 1 203, ChD.

Gift taking effect when the present 'war with Germany shall terminate' and 'peace be declared'—Coincidence of termination of war and declaration of peace—Rule against perpetuities. **Re Grotrian (decd)** [1955] 1 788, ChD.

Shall not leave a child or widow—Whether 'leave' meaning 'have'. **Re Macandrew's Will Trusts** [1963] 2 919, ChD.

'Such period as my trustees shall think reasonable'—**Re Burton's Settlements** [1954] 3 193, ChD.

Conditional revocation. *See* Revocation—Conditional revocation, *post*.

Construction—

Adding words or re-modelling clause—

Unjustified for purpose of assisting forfeiture. **Re Murray (decd)** [1954] 3 129, CA.

Double gift. *See* Residue—Double gift—Construction, *post*.

Foreign will. *See* Conflict of laws (Will—Construction).

Intention of testator—

Gift to corporation described by its correct corporate title—Context showing that despite continued existence of corporation payment not intended to be made to it. **Re Meyers (decd)** [1951] 1 538, ChD.

Provision for disposition 'in event of husband predeceasing me or surviving for less than one month'—No disposition in event of husband's survival for more than one month—Declaration that surviving husband entitled absolutely. **Re Smith (decd)** [1947] 2 708, ChD.

Words of will showing accidental omission or mistake—Literal construction possible—Supplying of words by the court. **Re Follett (decd)** [1955] 2 22, CA, **Re Whitrick (decd)** [1957] 2 467, CA.

Words of will showing omission of few words of power of appointment—Gift in default of appointment—Supplying of words by the court. **Re Cory (decd)** [1955] 2 630, ChD.

Words of will showing omission of words of power of appointment and gift in default of appointment—Supplying of words by the court. **Re Riley's Will Trusts** [1962] 1 513, ChD.

Intestacy—

Desirability of avoiding construction leading to intestacy. **Magee v Magee** [1936] 3 15, PC, **Re Geering (decd)** [1962] 3 1043, ChD.

Partial intestacy—Whether court should lean against construing will so that there is a partial intestacy. **Re Wragg (decd)** [1959] 2 717, CA.

Revocatory clause—

Entailed interest—Clause revoking entailed interest and substituting life interest where tenant of settled property born in testator's lifetime—Limitation to daughters of C as tenants in common in tail—Whether revocatory clause applicable to interests held by tenants in common. **Re Caldwell's Will Trusts** [1971] 1 780, ChD.

Revocatory clause in codicil—

Principles of construction of revocatory clause—Partial revocation by codicil. **Re Wray (decd)** [1951] 1 375, CA.

Will 'to be read as if the name of [M B] did not occur therein'—Gift to children of M B—Effect on special power of appointment given to M B. **Re Spensley's Will Trusts** [1952] 2 49, ChD.

Transposition of words—

Income to be divided between testator's children and his wife—Subsequent trusts logically relating to children's shares—Difficulty of construction resolved by transposition of initial gifts to children and wife. **Re Bacharach's Will Trusts** [1958] 3 618, ChD.

Two wills admitted to probate—

Principles of construction. **Re Plant (decd)** [1952] 1 78, ChD.

Will speaks from death—

Articles 'now' deposited at stated place—Contrary intention—Wills Act 1837, s 24. **Re Whitby** [1944] 1 299, CA.

WILL (cont)

- Contingent interest—
 - Vested subject to being divested. *See* **Settlement** (Contingent interest—Contingent interest distinguished from vested interest liable to be divested).
- Contract to make disposition by will—
 - Family provision. *See* **Family provision** (Will—Contract to make disposition by will).
- Contrary intention—
 - Settlement and will made before, and testatrix's death after, 1st January 1926—
 - Distribution of property as on intestacy. *See* **Distribution of property as on intestacy—Settlement and will made before, and testatrix's death after, 1st January 1926—Contrary intention, post.**
- Creditors—
 - Direction to pay debts. *See* **Debts—Direction to pay debts—Creditors, post.**
- Death duties—
 - Payment of death duties. *See* **Payment of death duties, post.**
- Death duty—
 - New South Wales. *See* **New South Wales** (Death duty—Dutiable estate).
- Debts—
 - Direction to pay debts—
 - Creditors—Secured and unsecured creditors—Direction enuring for benefit of joint mortgagor and surety—Legacy—Lapse—Bequest to creditor of deceased son—Creditor predeceasing testatrix. *Re* **Leach's Will Trusts** [1948] 1 383, ChD.
 - Exoneration—
 - Clause exonerating 'all people from the repayment of moneys owing to me at the time of my death'—Secured and unsecured debts owing to testatrix. *Re* **Coghill** [1948] 1 254, ChD.
 - Clause forgiving and rehearsing 'all sums owing to me'—Loan to company—Release. *Midland Bank Executor & Trustee Co Ltd v Yarners Coffee Ltd* [1937] 2 54, ChD.
 - Will forgiving and releasing executor's debt. *See* **Executor and administrator** (Executor—Appointment—Appointment of debtor as executor—Release of debt in law—Equitable obligation to account for debt—Intention to forgive debt—Will forgiving and releasing executor from debt).
 - Satisfaction—
 - Annuity under deed—Bequest of sum for purchase of annuity of same amount. *Re* **Manners (decd)** [1949] 2 201, CA.
- Deficiency of estate. *See* **Administration of estates** (Deficiency).
- Dependant relative revocation—
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 - Evidence of original contents. *See* **Alteration—Evidence of original contents—Dependant relative revocation, ante.**
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 - Generally. *See* **Revocation—Conditional revocation, post.**
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 - Gift. *See* **Gift—Specific donees—Dependants, post.**
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- Destruction of object—
 - Gift. *See* **Gift—Destruction of object, post.**
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- Devise—
 - Administration of estate. *See* **Administration of estates** (Devise).
- Direction to destroy. *See* **Revocation—Revocation by written instrument—Direction to destroy, post.**
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- Discretion as to disposition of residue. *See* **Residue—Discretion as to disposition, post.**
- Discretion as to recipients. *See* **Trustee—Discretion as to recipients, post.**
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 - Class gift. *See* **Settlement** (Class gift—Distribution date).
- Distribution of property as on intestacy—
 - Income from residuary estate—
 - Income bequeathed to person who on death of present Earl should succeed to the earldom—Heir presumptive had no interest in property so given. *Re* **Earl of Middleton's Will Trusts** [1967] 2 834, ChD.
 - Life estate followed by gift in remainder—
 - Death of tenant for life in testator's lifetime—Whether gift lapsed. *Re* **Harward** [1938] 2 804, ChD.
- Distribution of property as an intestacy—
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 - Contrary intention—Administration of Estates Act 1925, s 50(2). *Re* **Walsh** [1936] 1 327, CA.
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- Division of residue. *See* **Residue—Division, post.**
- Domicile of testator. *See* **Testator—Domicile, post.**
- Donees—
 - Specific donees. *See* **Gift—Specific donees, post.**
- Double gift—
 - Residue—
 - Construction. *See* **Residue—Double gift—Construction, post.**

WILL (cont)

Double portions—

Ademption—

Pecuniary legacy and interest under discretionary trust in will—Settlement of share in private company—Nature of portion. **Re Vaux (No 2)** [1938] 4 703, CA.

Bringing portion into account against testamentary portion—

Estate duty deductible in valuing testamentary portion. *See* **Administration of estates** (Ademption—Double portions).

Rebuttal of presumption—

Difference in character of gifts—Liabilities undertaken by donee at time of gift *inter vivos*—Quid pro quo for liabilities—Donor compelled to make gift. **Re George's Will Trusts** [1948] 2 1004, ChD.

Satisfaction—

Gift of shares in private company by settlement—Pecuniary legacy under will—Partial intestacy—Perpetuities—Trusts clearly void—Dealings to be within limits prescribed by law. **Re Vaux** [1938] 4 297, CA.

Election—

Application of doctrine of election to will. *See* **Equity** (Election—Application of doctrine of election to will).

Election against will. *See* **Equity** (Election—Election against will).

Employee—

Gift to employee. *See* Gift—Specific donee—Employee 'if in my service at the time of my death' *post*.

Entailed interest—

Revocatory clause—

Construction. *See* Construction—Revocatory clause—Entailed interest, *ante*.

Envelope—

Signature on separate document—

Execution. *See* Execution—Signature on separate document—Envelope, *post*.

Estate duty—

Direction for payment. *See* **Administration of estates** (Estate duty).

Incidence. *See* **Estate duty** (Incidence).

Evidence—

Adverse evidence of attesting witnesses. *See* **Attestation—Evidence—Adverse evidence of attesting witnesses, ante.**

Evidence of original contents—

Alteration after execution. *See* **Alteration—Alteration after execution—Evidence of original contents, ante.**

Executor dying without taking out probate—

Admissibility of evidence to prove that testator had not died intestate—Administration of Estates Act 1925, s 5. **Whitmore v Lambert** [1955] 2 147, CA.

Trust of income as directed—

Written statement by trustee as to directions—Death of trustee—Admissibility of statement. **Re Gardner's Will Trusts** [1936] 3 938, ChD.

Exclusion of rule in *Howe v Dartmouth*. *See* **Apportionment—Clause negating apportionments—**

Exclusion of rule in *Howe v Dartmouth, ante*.

Execution—

Place of testator's signature—

Above dispositive provisions—Whether signature so placed as to make it apparent testator intended to give effect to document as his will—Wills Act Amendment Act 1852, s 1. **Re Harris (decd)** [1952] 2 409, Prob.

Foot or end of will—Intention of testator—Wills Act 1837, s 9—Wills Act Amendment Act 1852, s 1. **Re Hornby (decd)** [1946] 2 150, Prob.

Signature at top of will attested—Second signature of testator below disposition and at foot of will not attested—Whether will validly executed—Force of *maxim omnia praesumuntur rite esse acta*—Wills Act 1837, s 9. *In the Estate of Bercovitz (decd)* [1962] 1 552, CA.

Signature on same page as ordinary commencement—Evidence that signature written last—Wills Act Amendment Act 1852. *In the Estate of Long* [1936] 1 435, Prob.

Will consisting of several sheets—Nexus between sheets—Signing and attesting below space on last page—Inference concerning testamentary intention—Holograph additions inserted above signature—Wills Act 1837, s 9—Wills Act Amendment Act 1852, s 1. **Re Little (decd)** [1960] 1 387, Prob.

Signature—

Holograph will attested properly but signed 'your loving mother'—Whether a signature within the meaning of Wills Act 1837, s 9. *In the Estate of Cook (decd)* [1960] 1 689, Prob.

Partial signature—Surname incomplete—Testatrix becoming unconscious while writing name—Never regaining consciousness—Whether a 'signature'—Wills Act 1837, s 9. **Re Chalcraft (decd)** [1948] 1 700, Prob.

Signature on separate document—

Dispositive document attested but not signed—Document enclosed in envelope signed by intending testator—Wills Act 1837, s 9—Wills Act Amendment Act 1852, s 1. *In the Estate of Bean* [1944] 2 348, Prob.

Envelope—Dispositive document enclosed in envelope—Envelope signed by testatrix—Document and envelope sufficiently connected—Evidence that signature on envelope intended to be signature of will—Document already signed by testatrix—Signature at top of document and therefore ineffective—Whether signature on envelope intended as signature of will. **Re Beadle (decd)** [1974] 1 493, ChD.

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Appointment—

Incomplete will. *See* **Incomplete will—Appointment of executor, post**.

Exoneration—

Debts. *See* **Debts—Exoneration, ante**.

WILL (cont)

Failure of trusts. *See* Accruer—Failure of trusts, *ante*.

Family provision. *See* Family provision.

Foreign adoption—

Devolution of property. *See* Adoption (Foreign adoption—Death—Devolution of property—English will).

Foreign and English wills—

Gift—

Ineffective gift. *See* Gift—Ineffective gift—Foreign and English wills, *post*.

Foreign will—

Power of appointment—

Exercise by foreign will. *See* Conflict of laws (Power of appointment—General power—Exercise of power—Foreign will).

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Settled property. *See* Settlement (Forfeiture).

Forfeiture clause—

Alienation of interest—

Absolute gift of property to four sons as tenants in common—Forfeiture in event of assurance or mortgage by a son to person 'other than a brother or brothers of such son'. **Re Brown (decd)** [1953] 2 1342, ChD.

Assignment for benefit of creditors of 'whole means and estate'—Subsequent death of prior life tenant. **Re Pilkington's Will Trusts** [1937] 3 213, ChD.

Gift to son of share in residuary estate subject to forfeiture on alienation—Provision in son's marriage settlement for transfer to settlement trustees of part of son's share in testator's residue after payment thereof to him. **Re Haynes' Will Trusts** [1948] 2 423, ChD.

Annuity. *See* Annuity—Forfeiture clause, *ante*.

Consent by life tenant to advancement—

No advancement clause—Application of statutory power of advancement—Trustee Act 1925, s 32(1), s 69(2). **Re Rees' Will Trusts** [1954] 1 7, ChD.

Deprived of right to capital or interest—

Protective trusts—Court order that principal beneficiary should charge his interest to secure maintenance—No charge executed—Whether court order caused forfeiture—Trustee Act 1925, s 33(1)(ii). **Re Richardson's Will Trusts** [1958] 1 538, ChD.

Income vesting in another—

Annuity payable to Custodian of Enemy Property by operation of law—Whether annuity forfeited. **Re Hall** [1943] 2 753, ChD.

Authority to pay dividend from trust shares to creditors—No dividend declared. **Re Longman (decd)** [1955] 1 455, ChD.

Beneficiary an enemy—Payment of income to Custodian of Enemy Property—Trading with the Enemy Act 1939, s 7(1)—Trading with the Enemy (Custodian) Order 1939 (SR & O 1939 No 1198), art 1(i), (ii). **Re Pozot's Settlement Trusts** [1952] 1 1107, CA.

If the annuitant shall commit, permit or suffer any act, default or process whereby the annuity would become payable to another person—Annuity payable to Custodian of Enemy Property by operation of law—Whether annuity forfeited—'Process'—Trading with the Enemy Act 1939—Trading with the Enemy (Custodian) Order 1939 (SR & O 1939 No 1198). **Re Harris** [1945] 1 702, ChD.

Personal discharge for income—

Income payable to beneficiary 'so long as he shall be able to give a personal discharge'—Appointment of receiver in lunacy of beneficiary's estate. **Re Oppenheim's Will Trusts** [1950] 2 86, ChD.

Severability—

Life interest forfeited—Interest of issue—Rule against perpetuities. **Re Morrison's Will Trusts** [1939] 4 332, ChD.

Forgery—

Evidence—

Conviction—Admissibility. *See* Evidence (Conviction—Admission as evidence in civil proceedings—Subsisting conviction—Conviction subject to appeal—Adjournment of civil proceedings pending appeal—Probate—Will—Validity—Allegation that will a forgery).

Gift—

Absolute gift—

Failure to dispose of whole interest devised to the beneficiary. **Re Cohen's Will Trusts** [1936] 1 103, ChD.

Gift to person and the descendants of his branch of the family—Whether construed as entailed interest—Indefinite gift of income—Law of Property Act 1925, s 130(2). **Re Brownlie** [1938] 4 54, ChD.

Gift to sister of legacy 'for life use, to revert to estate if she does not remarry'—Absolute gift to be implied on sister's remarriage. **Re Lane's Estate** [1946] 1 735, ChD.

Gift until specified age—Whether absolute gift to be implied. **Re Arnould (decd)** [1955] 2 316, ChD.

Gift with request to leave property to certain persons—Precatory trust. **Re Johnson** [1939] 2 458, ChD.

Amount of pecuniary legacy—

Inconsistency between words and figures. **Re Hammond** [1938] 3 308, ChD.

Legacy of such a sum as with moneys given inter vivos will amount to stated sum—Moneys given inter vivos liable to estate duty on death of testator. **Re Dawson's Will Trusts** [1957] 1 177, ChD.

Appointment of beneficiaries—

Born in the lifetime of the testator—Special power of appointment—Life interest appointed to a nephew's widow during widowhood if 'born in the lifetime' of the testator—En ventre sa mère at death of testator—Whether 'born in the lifetime' of the testator. **Re Stern's Will Trusts** [1961] 3 1129, ChD.

WILL (cont)**Gift (cont)—**

Bequest to charitable trust which had ceased to exist—

Validity of gift as purpose trust. *See* **Charity** (Charitable trust—Will—Gift to charitable institution—Dissolution of institution after date of will and before testator's death).

Business—

Solicitor's practice—Whether confined to goodwill or including all assets of business. *Re* **Rhagg** [1938] 3 314, ChD.

What assets included in gift of testator's business of house furnisher—Whether gift subject to payment of trade liabilities. *Re* **White (decd)** [1958] 1 379, ChD.

Charitable organisation unregistered at date of will. *See* **Charity** (Charitable trust—Will—Gift to body not registered as charity).

Concurrent gifts—

Joint tenancy or tenancy in common—Words of severance in original gift—Application to substitutional gift. *Re* **Froy** [1938] 2 316, ChD.

Conditional bequest. *See* **Administration of estates** (Legacy—Conditional bequest).

Destruction of object—

Gift to ear, nose and throat hospital at a particular address—Work of hospital at that address closed down after date of will and before testator's death—Patients transferred to special wing of general hospital—Assets transferred to general hospital exclusively for benefit of special wing. *Re* **Hutchinson's Will Trusts** [1953] 1 996, ChD.

Gift to non-charitable unincorporated association—Money held by members as accretion to funds subject to contract between them—Association named in will amalgamated with similar association before date of will—Whether gift could be taken by amalgamated society. *Re* **Recher's Will Trusts** [1971] 3 401, ChD.

Gift to teaching hospital—Institution taken over by State between death of testatrix and grant of probate. *Re* **Kellner's Will Trusts** [1949] 2 774, CA.

Vesting of hospital in Minister of Health after date of will but before death of testatrix—National Health Service Act 1946, ss 6, 7. *Re* **Morgan's Will Trusts** [1950] 1 1097, ChD, *Re* **Glass' Will Trusts** [1950] 2 953, ChD.

Vesting of hospital in Minister of Health after death of testator, but before legacy paid over—National Health Service Act 1946, s 6(1). *Re* **Hunter (decd)** [1951] 1 58, ChD.

Disclaimer—

Payment of estate duty on disclaimed gift. *Re* **Parsons** [1942] 2 496, CA.

Purported disclaimer by one joint tenant operating as a release. *Re* **Schar (decd)** [1950] 2 1069, ChD.

Right to retract—Voluntary disclaimer owing to misunderstanding—Position not altered to anyone's detriment. *Re* **Cranstoun's Will Trusts** [1949] 1 871, ChD.

Fund for payment of pecuniary legacies—

Undisposed of share of residue. *Re* **Midgley (decd)** [1955] 2 625, ChD.

Whether payable out of residue or primarily out of lapsed share of residue. *Re* **Beaumont's Will Trusts** [1950] 1 802, ChD.

Future specific devise—

Vesting in possession deferred—'Shall not take effect'. *Re* **McGeorge (decd)** [1963] 1 519, ChD.

Gift cum onere. *See* **Administration of estates** (Gift—Gift cum onere).

Gift dependent on one of two events—

Express mention of only one event—Effect given to testator's intention. *Re* **Main (decd)** [1947] 1 255, ChD.

Gift during widowhood—

Beneficiary a spinster—Gift for period which cannot exist. *Re* **Gale** [1941] 1 329, ChD.

Beneficiary a spinster known by repute as testator's wife—Testator's will providing his own dictionary—'Remarriage'. *Re* **Lynch** [1943] 1 168, ChD.

Decree of nullity in respect of second marriage—Whether gift restored. *Re* **Eaves** [1939] 4 260, CA.

Gift of income of residue to wife during widowhood—Remarriage of wife—Second 'marriage' annulled—Wife's right to income, as testator's widow, since date of annulment. *Re* **Dewhirst** [1948] 1 147, ChD.

Gift over—

After prior limitation—Particular condition not satisfied—Ultimate gift over on death of prior donee during lifetime of testator's mother—Death of prior donee after death of testator's mother, but during lifetime of testator. *Re* **Bowen (decd)** [1948] 2 979, ChD.

After the 'termination of the present war'—Perpetuities—Validity. *Re* **Engels** [1943] 1 506, ChD.

Coincident deaths—Proviso if wife's death preceding or 'coinciding' with death of testator—Testator and wife died when ship lost at sea—No evidence of how loss occurred—No survivor—Whether wife's death coincided with testator's death. *Re* **Rowland (decd)** [1962] 2 387, CA.

Construction of words of contingency—Whether words should be construed otherwise than literally—Share of residuary estate to testator's son, 'but if my said son shall not leave a child or widow who shall become entitled to an interest in his share', ultimate gift over—Son had no children but survived by widow—Gift over subject to interest given to widow. *Re* **Macandrew's Will Trusts** [1963] 2 919, ChD.

Gift to tenants in common for life—Gift over on death of all tenants in common—Implication of cross-remainders. *Re* **Riall** [1939] 3 657, ChD.

Impracticability of gift—Whether applicable to initial as well as future impracticability. *See* **Charity** (Failure of object—Impracticability).

Legacy settled on daughter and her issue—Gift over if no child of daughter should attain 21—Codicil excluding issue of daughter by W from any benefit under will—Daughter having no issue other than children by W—Death of daughter leaving children who had attained 21—Effect of gift over. *Re* **Crawshay** [1948] 1 107, CA.

WILL (cont)**Gift (cont)—****Gift over (cont)—**

Of fund to be appropriated to provide for annuity—Death of annuitant in lifetime of testatrix—Codicil confirming will after death of annuitant—Effect on gift over. **Re Clarke** [1942] 2 294, ChD.

On particular event—Attainment of 21 years—Confirmation by two codicils—Testator predeceased by sole member of class dying over 21 and after the will but before the two codicils. **Re May's Will Trusts** [1943] 2 604, ChD.

Gift subject to charge—

Freehold property purchased during last illness of testator—Balance of purchase money advanced by solicitor—Deeds handed to solicitor—Charge—Gift cum onere—Administration of Estates Act 1925, s 35. **Re Riddell** [1936] 2 1600, ChD.

Gift subject to payment of annuities—Whether both personal obligation and charge on the subject-matter of the gift. **Re Lester** [1942] 1 646, ChD.

Motor cars which shall be ordered for any dwelling-house—Motor car ordered, but not delivered or paid for—Whether charged with payment of purchase price—Administration of Estates Act 1925, s 35. **Re Coxen (decd)** [1948] 2 492, ChD.

Implication—

Moiety remaining 'after my wife shall have received her *jus relictæ*' bequeathed by testator domiciled in England—Whether implied gift of other moiety—Meaning of 'moiety'. **Re Angus's Will Trusts** [1960] 3 835, ChD.

Income—

Future defeasible gift—Inclusion of intermediate income. **Re Gillett's Will Trusts** [1949] 2 893, ChD.

Gift of income until marriage—Thereafter disposition of corpus—Death of legatee unmarried—Devolution of corpus. **Re Henry Will Trust** [1953] 1 531, ChD.

Income free of all taxes (including income tax) and duties—Kenya income tax—Incidence of foreign income tax. **Re Frazer** [1941] 2 155, ChD.

Reasonable income—Direction to executors to let T enjoy one of testator's flats during her lifetime and to receive a reasonable income from his other properties—Whether bequest of 'reasonable income' void for uncertainty. **Re Golay (decd)** [1965] 2 660, ChD.

To pay the income of the residuary trust fund up to the sum of £1,000 per annum to L for her life—Whether deficiency of income may be supplied out of surplus of subsequent years. **Re Carey (decd)** [1950] 1 726, ChD.

Ineffective gift—

Bequest of business to trustees—Half share only owned by testator—Direction to trustees to offer whole business at half value to person actually an equal partner with the testator. **Re Mulder** [1943] 2 150, CA.

Foreign and English wills—Gift under foreign will ineffective—Whether passing under residuary bequest in English will. **Re Duke of Wellington** [1947] 2 854, CA.

Trust in favour of persons named in a certain deed to be the trustees of such deed upon the trusts therein declared—Deed never operative. **Re Hurdle** [1936] 3 810, ChD.

Interest payable on—

Legacy payable at 21—Trustees empowered to use legacy or any part thereof for education of legatee until he shall attain the age of 21—Payment of interest from date of testator's death. **Re Selby-Walker (decd)** [1949] 2 178, ChD.

Legacy to be paid immediately after testator's death—Legacy to trustees on trust for son contingently—Dates from which legacies carried interest. **Re Pollock (decd)** [1943] 2 443, ChD.

Latent ambiguity—

One article available to answer two bequests—Article divisible—Moiety to each beneficiary. **Re Alexander's Will Trust** [1948] 2 111, ChD.

Misdescription—

Bequest of 'my 750 ordinary shares' in named company—Testatrix possessed of 7,500 ordinary shares in company at date of will and date of death—Testatrix' original holding consisted of 750 shares—Bonus issue of 6,750 received before date of will—Whether gift passed all testatrix' shares in the company—Whether earlier wills admissible as evidence of intention—Whether gift failed for uncertainty. **Re Tetsall (decd)** [1961] 2 801, ChD.

False description of beneficiary—Validity of gift—Need to prove fraud. **Re Posner (decd)** [1953] 1 1123, Prob.

Identity of legatee—Falsa demonstratio non nocet. **Re Nesbitt's Will Trusts** [1953] 1 936, ChD.

Legatee—Descriptive title—Charitable purpose rather than gift to individual indicated—Inaccuracy in description owing to change before date of will—Other bequests to charitable organisations benefiting animals—Bequest to London Animal Hospital—Veterinary surgeon formerly carrying on his practice under that style—Whether gift to surgeon—Whether general charitable intention shown. **Re Satterthwaite's Will Trusts** [1966] 1 919, CA.

Personal chattels—

Articles of personal use—Furniture—Clocks—Collection of clocks—Collection inherited by testator—Collection stored in locked rooms by testator but not added to—Whether clocks 'personal chattels'—Administration of Estates Act 1925, s 55(1)(x). **Re Crispin's Will Trusts** [1974] 3 772, CA.

Beneficiaries to select from personal chattels—Storage and insurance of chattels—Whether costs to be borne by beneficiaries or residue—Whether costs to be borne by income or capital of residue. **Re Collins's Settlement Trusts** [1971] 1 283, ChD.

Stamp and coin collections—Whether 'personal effects' included collections—Whether *prima facie* meaning of phrase displaced. **Re Collins's Settlement Trusts** [1971] 1 283, ChD.

Stamp collection—Whether 'article of personal use' within definition of personal chattels—Administration of Estates Act 1925, s 55(1)(x). **Re Reynold's Will Trusts** [1965] 3 686, ChD.

WILL (cont)

Gift (cont)—

Property capable of disposition—

Debt—Shares—Testatrix entitled to money owing to deceased husband—Testatrix entitled to have shares registered in her name—Whether capable of disposing of debt and shares. **Re Leigh's Will Trusts** [1969] 3 432, ChD.

Selection—

Similar properties devised to several persons—No express provision as to selection—Some devisees described as a class—Right of selection—Selection by lot. **Re Knapton** [1941] 2 573, ChD.

Shares in company—

Ademption. *See* Ademption—Gift of shares, *ante*.

Bequest to a company of shares in the company—Validity. **Re Castiglione's Will Trusts** [1958] 1 480, ChD.

Business—Bequest of shares in company to be incorporated by will trustees and to acquire testator's business—Company incorporated by testator after date of will—Whether bequest carried the shares held by the testator at his death. **Re Quibell's Will Trusts** [1956] 3 679, ChD.

Number of shares bequeathed amounting to exact number held by testator—No words indicating testator's ownership of shares bequeathed. **Re Rose (decd)** [1948] 2 971, ChD.

Shares forming part of testator's estate—Right of legatee to dividends declared before satisfaction of legacy. **Re Hall (decd)** [1951] 1 1073, ChD.

Specific bequests—

All his worldly goods and chattels both real and personal—Inclusion of real property. **Re Young (decd)** [1950] 2 1245, ChD.

All moneys of which I die possessed—Absence of context—Home-made will. **Perrin v Morgan** [1943] 1 187, HL.

All my belongings—Exclusion of real property. **Re Price (decd)** [1950] 1 338, ChD.

All my bloodstock—Inclusion of half share in horse and interest as member of syndicate owning stallion. **Re Gillson (decd)** [1948] 2 990, CA.

All my furniture and movables not consisting of mortgages shares bonds or securities—Movables—Exclusion of sums of money. **Re Walsh (decd)** [1953] 1 982, ChD.

All my home and personal belongings. **Re Mills' Will Trusts** [1937] 1 142, ChD.

All my horses to wife—Only horses those owned as tenant in common with wife—Admission of extrinsic evidence—No specific thing disposed of. **Re Sykes** [1940] 4 10, ChD.

All my plate—Whether Sheffield plate and electro-plate included. **Re Grimwood** [1945] 2 686, ChD.

All my real estate. **Re Ridley (decd)** [1950] 2 1, ChD.

All my stocks and shares—Inclusion of interests in loan capital or funded indebtedness of foreign governments, municipalities and railway companies. **Re Purnchard's Will Trusts** [1948] 1 790, ChD.

All my stocks and shares—Whether bequest included investments other than stocks and shares of limited companies. **Re Everett** [1944] 2 19, ChD.

All other contents of my home or at the bank—Whether choses in action included—To be sold—Whether cash included. **Re Abbott** [1944] 2 457, CA.

All other money invested or in the London and County Bank—Residuary gift. **Re Recknell** [1936] 2 36, ChD.

All stocks, shares and moneys in the care, custody or possession of bank—Bank holding only dividend mandates for stocks inscribed at the Bank of England—Testatrix afterwards of unsound mind—Order in lunacy for transfer of stocks to the name of Accountant-General—Effect of order on dividend mandates—Lunacy Act 1890, s 116—Lunacy Act 1922, s 2(8). **Re Palmer** [1944] 2 406, CA.

Any money I may leave—Sums on deposit account—Sum on share account with building society—National development bonds—Premium savings bonds—Whether included in gift. **Re Barnes's Will Trusts** [1972] 2 639, ChD.

Any moneys that I have in the bank—National Savings Certificates, share certificate, post-war credit certificates and diamond ring deposited at bank—Travellers' cheques held by deceased—Extent of gift. **Re Trundle (decd)** [1961] 1 103, ChD.

Any possessions I may have. **Re Brace (decd)** [1954] 2 354, ChD.

Articles of vertu—Gold chain presented on election as sheriff. **Re Coxen (decd)** [1948] 2 492, ChD.

Cash in Lloyds Bank—Home-made will—Testatrix died leaving current and deposit accounts in Lloyds Bank—Testatrix aware of both accounts—Bequest carried credit balances on both accounts. **Re Stonham (decd)** [1963] 1 377, ChD.

Community house—Residuary bequest to a community house—Whether a gift for the furtherance of the work of the community. **Re Banfield (decd)** [1968] 2 276, ChD.

Entailed interest—Devise referring specifically to the property—Law of Property Act 1925, s 176(1). **Re Manor Farm, Kytes Hardwick** [1950] 2 572, ChD.

Everything I die possessed of—Testator's share in father's residuary estate—Death of testator before father—Testator's children surviving father—Wills Act 1837, s 33. **Re Hayter** [1937] 2 110, ChD.

Gift of £200 out of half of trust fund 'in the event of the death of either of my ... daughters ... without leaving issue'—Remainder of that half of fund to accrue to other daughter and her issue—Successive deaths of both daughters without either leaving issue—£200 payable on each death. **Re Clanchy's Will Trusts** [1970] 2 489, CA.

Goodwill of my business and stock and plant—Inclusion of freehold premises—Debts due to me in respect of said business—Sum standing to credit of banking account. **Re Betts (decd)** [1949] 1 568, ChD.

Jewellery—Unmounted cut diamonds. **Re Whitby** [1944] 1 299, CA.

Land—Inclusion of incorporeal hereditaments—Tithe rentcharge. **Re Lory's Will Trusts** [1950] 1 349, ChD.

WILL (cont)**Gift (cont)—****Specific bequests (cont)—**

Leasehold house together with contents—Whether joint gift or two independent gifts. **Re Joel** [1943] 2 263, CA.

Life interest in all property—Sums in consideration of past services payable after testator's death—Whether capital or income. **Re Payne (decd)** [1943] 2 675, ChD.

My bank deposit at M bank—Current account, but no deposit account at bank—Certificates of title to investments deposited at bank—Current account closed shortly before testator's death, as testator too ill to sign cheques—Balance of account transferred to relative to pay testator's expenses—Sum in hand at testator's death. **Re Heilbronner (decd)** [1953] 2 1016, ChD.

My cameras projectors films and other photographic appliances and my watches (other than my calendar watch) chain studs and other personal jewellery—Testator possessing certain personal jewellery of his own and having inherited jewellery from his deceased wife before making the will—Whether 'other personal jewellery' included wife's jewellery—Ejusdem generis rule. **Le Cras v Perpetual Trustee Co Ltd** [1967] 3 91, PC.

My leasehold house—Testator at date of will holding house under long lease—Testator subsequently acquiring freehold—No merger of leasehold and freehold interests—Whether gift passing freehold interest in house—Wills Act 1837, s 23. **Re Fleming's Will Trusts** [1974] 3 323, ChD.

My securities—Remainder of the money. **Re Smithers** [1939] 3 689, ChD.

My War Bonds—Testatrix possessed of Consolidated Inscribed Stock, National Savings Certificates and Defence Bonds—Falsa demonstratio non nocet. **Re Gifford (decd)** [1944] 1 268, ChD.

Net income of residuary trust funds—Trust funds including shares in company—Capital distribution by company, in respect of shares, out of realised capital profits—Whether sum distributed capital or income. **Re Doughty** [1947] 1 207, CA.

On condition that the beneficiaries agree to pay in equal shares to testator's widow 'for the remainder of her life ... 10s per week'—Tenancy in common. **Re North (decd)** [1952] 1 609, ChD.

Pay the income arising to my children in equal shares and after the death of all my children to grandchildren then living—Tenancy in common. **Re Davies (decd)** [1950] 1 120, ChD.

Personal and household goods and effects—Whether, in the particular context of the bequest, library books, etchings and mountain photographs passed thereunder. **Re Mengel's Will Trusts** [1962] 2 490, ChD.

Personal belongings. **Re Hynes (decd)** [1950] 2 879, CA.

Personal chattels as defined by Administration of Estates Act 1925—Article of personal use—Motor yacht bought and used entirely for pleasure cruises—Administration of Estates Act 1925, s 55(1)(x). **Re Chaplin (decd)** [1950] 2 155, ChD.

Personal estate. **Re Cook (decd)** [1948] 1 231, ChD.

Property—In the phrase 'income of property actually producing income' meant 'property forming part' of the testator's estate. **Re Hey's Settlement Trusts and Will Trusts** [1945] 1 618, ChD.

Stamps of 'Great Britain and ... the British Colonies'—British Colonials—Meaning attributed by philatelists—What stamps included in gift. **Re Van Lessen (decd)** [1955] 3 691, ChD.

Ten thousand preference shares in private company—Testator holding only 9,000 shares—No words indicating testator's ownership of shares bequeathed—Legacy not included in pecuniary legacies to be satisfied out of residue. **Re O'Connor's Will Trusts** [1948] 2 270, ChD.

To found a cot in a hospital—Found. **Re Ginger (decd)** [1951] 1 422, ChD.

Whole estate to C—Codicil providing that 'in the event of the simultaneous death' of C and the testatrix 'the interests of my moneys to be divided between' Mrs M and E 'after the deaths of these two named the capital to go to my nephew'—Testatrix C and E killed instantaneously by the same bomb—Whether gift in will revoked by codicil—Simultaneous death—After the deaths of these two named—Gift of capital to take effect only after death of survivor of Mrs M and E—E's half share payable to Mrs M during the remainder of Mrs M's life—Law of Property Act 1925, s 184. **Re Pringle** [1946] 1 88, ChD.

Specific donees—

All my relations—Rule of convenience—Variation of rule due to the enactment of Administration of Estates Act 1925, s 46. **Re Bridgen** [1937] 4 342, ChD.

All nephews and nieces of my late sister L—Intention of gift to children of L. **Re Birkin (decd)** [1949] 1 1045, ChD.

Any national appeal to the public which may exist at the time when the residue of my estate is realised—Time of ascertainment of legatee—When residue of testatrix' estate was realised—No trust for conversion—Whether time referred to was end of executors' year. **Re Petrie (decd)** [1961] 3 1067, CA.

Charitable institutions referred to by me in this my will—Unitarian church. **Re Nesbitt's Will Trusts** [1953] 1 936, ChD.

Children of child who shall die in lifetime of testatrix—Child already dead at date of will. **Re Birchall, Re Valentine** [1940] 1 545, CA.

Children of E J and M J—Whether child of E J alone included. **Re Lewis's Will Trusts** [1937] 1 556, ChD.

Dependants. **Re Ball** [1947] 1 458, ChD.

Descendants—Whether 'descendants' apt to include collateral relations. **Re Thurlow (decd)** [1972] 1 10, ChD.

Employee 'if in my service at the time of my death'—Receiver in lunacy of testator appointed—Employment of servant continued by receiver—Release from performing any service for testator. **Re Silverstone (decd)** [1949] 1 641, ChD.

WILL

Gift—

Specific donees—

Employee in testator's service at date of his death—Business carried on in partnership. *Re Howell's Trusts* [1937] 3 647, ChD.

Employees 'who shall have been in the service of' a limited company 'for a period of five years and upwards'—Employment at the date of testator's death—Inclusion of service with testator before formation of company—Need for period to be continuous—Inclusion of war service—Inclusion of apprentice in term 'employee'. *Re Marryat (decd)* [1948] 1 796, ChD.

Employees who shall have 'had not less than five years' service'—Need for period to be continuous—Inclusion of way service. *Re Bedford (decd)* [1951] 1 1093, ChD.

Equally between daughters of S and to E—Per stirpes or per capita. *Re Jeeves (decd)* [1948] 2 961, ChD.

Equally between the children of my deceased sister T and the said F H—Children of different generation from that of testatrix, T and F H. *Re Birkett (decd)* [1950] 1 316, ChD.

Grandchildren—Application of term to named persons not grandchildren. *Re Davidson (decd)* [1949] 2 551, ChD.

Heir-at-law—Construction in popular sense. *Re Hooper* [1936] 1 277, CA.

Heir-at-law of survivor of two beneficiaries—Whether heir at common law or successors to real estate of an intestate dying in New Zealand subsequent to 1874—Real Estate Descent Act (No 84 of 1874), ss 3, 18—Administration Act (No 49 of 1879), ss 6, 10—Administration of Estates Act (No 3 of 1908), ss 4, 11. *Macleay v Treadwell* [1937] 2 38, PC.

Heirs and successors—Ascertainment of class comprising 'heirs and successors'—Shares in which persons within the class are entitled—Relevance of intestate succession. *Re Kilvert (decd)* [1957] 2 196, ChD.

If any daughter of mine shall die without lawful issue her surviving her share to devolve on other children—Whether death at any time would cause divesting. *Re Williams' Will Trusts* [1949] 2 11, ChD.

Individuals born after date of will—Exclusion of those born after death of testator—Rule of convenience. *Re Bellville* [1941] 2 629, CA.

Issue of our marriage—Exclusion of grandchildren. *Re Noad (decd)* [1951] 1 467, ChD.

M and/or J M and J being a married woman and her husband. *Re Lewis* [1942] 2 364, ChD.

Male descendants—Whether including males descended through females. *Re Drake's Will Trusts* [1970] 3 32, CA.

Masonic lodge—Gift applicable as members shall direct—Fund to build masonic temple—Validity. *Re Turkington* [1937] 4 501, ChD.

'My brothers A and B, also C and D—Equally'—C and D children of a deceased brother of testatrix. *Re Jeffrey (decd)* [1948] 2 131, ChD.

My trustees absolutely they well knowing my wishes concerning the same—Gift of estate on trust and not gift conditional on discharge of testator's wishes. *Re Rees' Will Trusts* [1949] 2 1003, CA.

Nephews and nieces—Whether persons related by affinity included. *Re Daoust* [1944] 1 443, ChD.

Next-of-kin—Such of testator's 'next-of-kin' according to the statutes of distribution as should be living in the United Kingdom at the decease of his daughter—Whether brothers and nieces of testator entitled to take with widow—Administration of Estates Act 1925, s 50(1). *Re Krawitz's Will Trusts* [1959] 3 793, ChD.

Per stirpes and not per capita—Stipital distribution by necessary implication from proviso. *Re Cockle's Will Trusts* [1967] 1 391, ChD.

Such persons who would have been entitled under Part IV of the Administration of Estates Act 1925—Right of Crown to succeed as a 'person' or by prerogative right—Administration of Estates Act 1925, s 46(1)(vi). *Re Mitchell (decd)* [1954] 2 246, ChD.

Surviving descendants on death of last survivor of testator's children—Gift divisible per stirpes—Whether children or grandchildren to be the stirpes. *Sidey v Perpetual Trustees Estate and Agency Co of New Zealand Ltd* [1944] 2 225, PC.

To the wife of my grandson A E H subject to prior life interest of M W H—Gift over 'in the event of my grandson not marrying'—Grandson unmarried at date of will and at death of testatrix—Subsequently married twice—First marriage dissolved—Second marriage during lifetime of M W H—Gift to first person answering description of being wife of grandson. *Re Hickman's Will Trusts* [1948] 2 303, ChD.

Voluntary hospitals—Whether a 'dispensary' is a hospital—Voluntary Hospitals (Paying Patients) Act 1936, s 1. *Re Alfred Ford* [1945] 1 288, ChD.

Substitutional gift—

Gift of testator's residuary estate to his sons in the event of testator and his wife dying 'during the present war'—Substitutionary dispositions if sons should also die 'during the present war'—'The present war'—Strict legal meaning displaced by context. *Re Cooper's Estate* [1946] 1 28, ChD.

Gift over failing—Whether original gift divested if gift over fails. *Re Rooke's Will Trusts* [1953] 2 110, ChD.

Gift over of deceased daughter's share to other sons and daughters—Any of them being then dead leaving issue who attain 21, such issue to take their deceased parents' share—Whether 'issue' construed as children of deceased son or daughter—Whether taking as tenants in common or joint tenants. *Re Manly's Will Trusts* [1969] 3 1011, ChD.

Gift to children living at death of life tenant and issue of any then dead—Whether issue must survive life tenant. *Mousley v Rigby* [1954] 3 553, ChD.

WILL (cont)

- Gift (cont)—
 - Substitutional gift (cont)—
 - Gift to issue attaining 21—Whether issue must survive parent. **Re Manly's Will Trusts** [1969] 3 1011, ChD.
 - Uncertainty of object—
 - Broadcast appeal—Direction to set aside fund to provide £2 per week to be paid to the cause for which appeal broadcast on Sunday. **Re Wood (decd)** [1949] 1 1100, ChD.
 - Vesting—
 - Bequest of residue and remainder—Gift over in certain events—Interests to vest at date due and payable. **Parkes (or Keswick) v Parkes (or Keswick)** [1936] 3 653, HL.
 - Gift contained only in direction to divide—Postponement of gift to let in life interest—Substitution clause. **Browne v Moody** [1936] 2 1695, PC.
 - Gift of fund to child on attaining the age of 21 years—Direction to executors to pay income during infancy and after death of life tenant to mother of child to be applied for advancement and education of child. **Re Rogers** [1944] 2 1, CA.
 - Real estate—Vested and contingent interests—Upon my son attaining the age of twenty-five years—'Shall take effect'. **Bickerstath v Shanu** [1936] 1 227, PC.
 - Voluntary undertaking to pay money—
 - Will directing undertaking to be fulfilled—Money payable in foreign country and in foreign currency. **Re Schnapper** [1936] 1 322, ChD.
- Grandchildren—
 - Gift. *See* Gift—Specific donees—Grandchildren, *ante*.
- Heirlooms—
 - Descent—
 - Rule in *Shelley v Shelley*—Gift to wife and heirs—Rule not applicable—Law of Property Act 1925, s 131. **Re McElligott** [1944] 1 441, ChD.
- Heirloom—
 - Descent—
 - Rule in *Shelley v Shelley*—Heirloom to be held by him and by his eldest son on his decease and to descend to the eldest son of such eldest son and so on to the eldest son of his descendants and I request my son to do all in his power by his will or otherwise to give effect to this my wish. **Re Steele's Will Trusts** [1948] 2 193, ChD.
 - To be enjoyed by person for time being 'actually' entitled to mansion house—
 - Proviso against absolute ownership by tenant in tail unless attaining 21 or dying under that age leaving lawful issue—Death over 21 by first tenant in tail by purchase when prior life interests still existing—Whether actual possession condition of ownership. **Re Coote** [1940] 2 363, ChD.
- Holograph will on single sheet of paper—
 - Attestation. *See* Attestation—Holograph will on single sheet of paper, *ante*.
- Home guard—
 - Soldier's or mariner's privileged will—
 - Actual military service. *See* Soldier's or mariner's privileged will—Actual military service—Home Guard, *post*.
- Hotchpot—
 - Partial intestacy. *See* Administration of estates (Partial intestacy—Hotchpot).
- Hotchpot clauses—
 - Advances—
 - Ascertainment of interest of beneficiaries—Charge of interest on advance as from death of testator. **Re Wills** [1939] 2 775, ChD.
 - Money lent 'to be taken in or towards satisfaction' and 'brought into hotchpot'—Estate insufficient to provide for all legacies—Whether clause operating as discharge of debt. **Re Horn (decd)** [1946] 2 118, CA.
 - Extent of interest to be brought into hotchpot—
 - Life interest followed by gift to children of life tenant with general power of appointment by will in default of children. **Re Gordon** [1942] 1 59, ChD.
- Husband and wife—
 - Mutual wills—
 - Identical terms. *See* Mutual wills—Identical terms—Husband and wife, *post*.
 - Identical terms. *See* Mutual wills—Identical terms, *post*.
 - Illegal condition. *See* Condition—Illegal condition, *ante*.
 - Illegitimate child. *See* Children—Illegitimate child, *ante*.
- Implication—
 - Gift. *See* Gift—Implication, *ante*.
- Impossibility of performance—
 - Condition. *See* Condition—Impossibility of performance, *ante*.
- Income—
 - Gift. *See* Gift—Income, *ante*.
 - Income vesting in another—
 - Forfeiture clause. *See* Forfeiture clause—Income vesting in another, *ante*.
- Incomplete will—
 - Appointment of executor—
 - No disposition of beneficial interest in estate—Executors Act 1830—Administration of Estates Act 1925, ss 46, 49. **Re Skeats** [1936] 2 298, ChD.
 - No appointment of executor—
 - No reference to property or extent of interest—'I give devise and bequeath unto' three named persons. **Re Stevens (decd)** [1952] 1 674, ChD.
 - Printed form of will—
 - Beneficiary's name inserted—Bequest left blank. **Re Messenger's Estate** [1937] 1 355, ChD.
- Intention of testator. *See* Construction—Intention of testator, *ante*.
- Interest accruing after death of tenant for life—
 - Apportionment. *See* Apportionment—Interest accruing after death of tenant for life, *ante*.

WILL (cont)

- Interlineation—
 - Alteration apparent in will. *See* Alteration—Apparent in will—Interlineation, *ante*.
- Intermediate income—
 - Residue. *See* Residue—Intermediate income, *post*.
- Intestacy—
 - Construction. *See* Construction—Intestacy, *ante*.
 - Generally. *See* Intestacy.
- Investments—
 - Direction in will to invest in authorised securities—
 - No power to buy land. *See* Trust and trustee (Trust for sale—Investments—Direction in will to invest in authorised securities).
- Issue—
 - Children—
 - Ultimate gift of daughter's settled fund. *See* Children—Ultimate gift of daughter's settled fund—Issue, *ante*.
 - Descendants—
 - Use of term in group life assurance scheme—Whether confined to legitimate relations. *See* Document (Construction—Words descriptive of family relationship—Group life assurance scheme—Descendant).
 - Gift. *See* Gift—Specific donees—Issue of our marriage, *ante*.
 - Substitutional or original gift—
 - Marriage settlement. *See* Settlement (Marriage settlement—Gift to issue—Substitutional or original gift).
- Lapse—
 - Beneficiary pre-deceasing testator—
 - Gift contingent on attaining age of 25—Death of legatee in lifetime of testator under 25—Legatee would have attained 25 had she died immediately after testator—Wills Act 1837, s 33. *Re Wolson* [1939] 3 852, ChD.
 - Gift of £20,000 to be held on trusts of daughter's marriage settlement—Covenant by testator in settlement to bring £10,000 into the settlement—\$20,000 declared to be 'in addition' to the £10,000—Settlement trust fund vested in daughter's son—Death of son before death of testator—Destination of £20,000 on daughter's death. *Re Hickman's Will Trusts, Re Playfair (decd)* [1950] 2 285, ChD.
 - Gift over on death of B in A's lifetime—B surviving A but predeceasing testatrix. *Re Bailey (decd)* [1951] 1 391, CA.
 - Ultimate gift over upon lapse by death—Gift failing by reason of donee never having had any children—Rule in *Jones v Westcomb*. *Re Fox's Estate* [1937] 4 664, CA.
 - Gift of residue equally to six persons by name—
 - Revocation by codicil of gift to one—*Re Midgley (decd)* [1955] 2 625, ChD.
 - Gift to hospitals 'to be added to the invested funds' of the hospital—
 - Hospital possessing no invested funds—Receipt of proper officer to be a discharge—Corporation having no officers. *Re Meyers (decd)* [1951] 1 538, ChD.
 - Statutory exception from lapse—
 - Beneficiary dying before 1926—Testatrix dying after 1925—Distribution of interest saved from lapse—Wills Act 1837, s 33. *Re Hurd* [1941] 1 238, ChD.
 - Death of beneficiary intestate—Distribution of interests saved from lapse—Time of ascertainment of persons entitled to interests on beneficiary's intestacy—Wills Act 1837, s 33. *Re Basioli (decd)* [1953] 1 301, ChD.
 - Residuary bequest to illegitimate child—Legitimation and death of child leaving issue before death of testatrix—Whether estate of legitimated child entitled to take gift—Wills Act 1837, s 33—Legitimacy Act 1926, s 3. *Re Brodie (decd)* [1967] 2 97, ChD.
 - Substituted gifts—
 - Legacy to personal representatives of deceased legatee. *Re Cousen's Will Trusts* [1937] 2 276, ChD.
- Latent ambiguity—
 - Gift. *See* Gift—Latent ambiguity, *ante*.
- Legacy—
 - Fund for payment. *See* Administration of estates (Fund for payment of legacies).
 - Interest. *See* Interest (Legacy).
 - Legacy to hospital. *See* National Health Service (Legacy to hospital).
 - Legacy to personal representatives of deceased legatee—
 - Lapse—Substitutional gifts. *See* Lapse—Substituted gifts, *ante*.
 - Payment. *See* Administration of estates (Legacy).
- Legitimacy—
 - Succession to personal property in England—
 - Child illegitimate by law of England but legitimate by law of domicile of origin. *Re Bischoffsheim* [1947] 2 830, ChD.
- Legitimated person—
 - Disposition. *See* Children—Legitimated person—Disposition, *ante*.
 - Right to take interests in property. *See* Legitimation (Right of legitimated person to take interests in property).
- Life interest—
 - Protective trust—
 - Forfeiture—Election against will—Liability to compensate disappointed beneficiaries. *See* Equity (Election—Election against will—Effect—Protected life interest).
- Lost will—
 - Probate—
 - Soldier's or mariner's privileged will. *See* Soldier's or mariner's privileged will—Lost will, *post*.
- Male descendants—
 - Gift. *See* Gift—Specific donees—Male descendants, *ante*.

WILL (cont)

- Marriage—
 - Condition—
 - Restraint of marriage. *See* Condition—Restraint of marriage, *ante*S.
 - Revocation by marriage. *See* Revocation—Marriage, *post*.
- Masonic lodge—
 - Gift. *See* Gift—Specific donees—Masonic lodge, *ante*.
- Medical practice—
 - Advancement clause—
 - Advancement in 'business'. *See* Advancement in 'business'—Medical practice, *ante*.
- Mental patient—
 - Execution of will. *See* **Mental health** (Patient's property—Execution of will).
 - Will by patient. *See* **Mental health** (Patient's property—Will).
- Misdescription—
 - False description of beneficiary. *See* Gift—Misdescription—False description of beneficiary, *ante*.
- Mutual wills—
 - Identical terms—
 - Husband and wife—Recital of agreement to make mutual wills—Each given absolute interest—In case of lapse, residuary estate divided into moieties, one moiety to be regarded as testator's personal moiety and the other as deceased spouse's moiety—Fresh will by husband after accepting benefit under wife's will—Implied trust in regard to wife's moiety of husband's residuary estate—Whether pecuniary legatees entitled to take as beneficiaries under trusts of wife's moiety and as legatees of similar legacies under second will. **Re Green (decd)** [1950] 2 913, ChD.
- Name and arms clauses—
 - Revocation. *See* Revocation—Conditional revocation—Name and arms clauses, *post*.
- Negligence—
 - Solicitor—
 - Damages. *See* **Solicitor** (Negligence—Damages—Will).
- Next of kin—
 - Gift. *See* Gift—Specific donees—Next of kin, *ante*.
- Nomination—
 - Exercise of power. *See* Testamentary disposition—Exercise of power—Nomination, *post*.
- Nuncupative will made in contemplation of voyage. *See* Soldier's and mariner's privileged will—
 - Seaman at sea—Nuncupative will made in contemplation of voyage, *post*.
- Option—
 - Option to purchase freehold property—
 - Conditional bequest. *See* Condition—Conditional bequest—Option to purchase freehold property, *ante*.
 - Option to purchase realty—
 - Business premises—Business carried on by tenant company in which testator and son had shares—Testator had sold business to company, but had retained freehold properties where business carried on—Son worked with testator in business—Testator bequeathed his share to son and gave him a right of pre-emption, after widow's death, over the freehold premises at a price that was realistic at the date of the will—Son died in widow's lifetime—Whether option personal to son or passed to son's personal representatives. **Re Zerny's Will Trusts** [1968] 1 686, CA.
 - Option expressed to be exercisable on death of testator's wife or in her lifetime with her consent—Wife predeceased testator—Whether option exercisable after testator's death. **Re Hammersley (decd)** [1965] 2 24, ChD.
 - Option to purchase at reasonable valuation—No express reference in will to trustees fixing what the price should be—Whether option valid—Inquiry to be held to fix reasonable price. **Talbot v Talbot** [1967] 2 920, CA.
 - Option to purchase dwelling-house at value for estate duty purposes—'Chancellor's concession'—Purchase at concession value. **Re Dowse (decd)** [1951] 1 558, ChD.
 - Subject-matter of option—Agreement by testator to purchase additional property, but sale not completed until after his death—Right of grantee to take property free from incumbrances—Purchaser or devisee—Real Estate Charges Act 1854, s 1. **Re Fison's Will Trusts** [1950] 1 501, ChD.
 - Option to purchase shares—
 - Donee assigning benefit of option and dying without exercising it—Whether option exercisable by donee's executors or by assignees. **Skelton v Younghouse** [1942] 1 650, HL.
 - Option to purchase under market value—Whether specific bequest. **Re Eve (decd)** [1956] 2 321, ChD.
 - Options to sons to purchase after death of tenant for life—'At par value'—Changes in regard to shares during tenancy of tenant for life—Amalgamation of company and substitution of increased number of shares in new company for those of old company—Substantial increase in value of holding—Liquidation of another company—Large sum paid by liquidator in respect of shares—Right of sons to exercise options. **Re Fison's Will Trusts** [1950] 1 50, ChD.
- Oral statement—
 - Seaman at sea. *See* Soldier's and mariner's privileged will—Seaman at sea—Oral statement, *post*.
- Order of application of assets—
 - Variation of statutory order. *See* **Administration of estates** (Order of application of assets—Statutory order).
- Partial intestacy—
 - Grant of administration. *See* **Intestacy** (Grant of administration—Partial intestacy).

WILL (cont)

Partial signature—

Attestation—

Acknowledgement. *See* Attestation—Acknowledgment of signature—Partial signature, *ante*.

Execution. *See* Execution—Signature—Partial signature, *ante*.

Payment of death duties—

Payment out of residue—

Gifts or settlements 'made in my lifetime'—Whether annuities payable by third parties under contracts with testator included—Testator 'economic source' of benefits—Prima facie meaning of 'gifts or settlements', unless restricted by context, sufficient to cover any benefaction. *Re Noad* [1944] 2 470, CA.

Pecuniary legacies—

Amount of pecuniary legacy. *See* Gift—Amount of pecuniary legacy, *ante*.

Fund for payment of pecuniary legacies. *See* Gift—Fund for payment of pecuniary legacies, *ante*.

Power of appointment—

Exercise by will. *See* Power of appointment (Exercise by will).

Power of sale—

Power given to 'my Trustees'—

Capacity of 'trustees'—Named persons executors and trustees—Exercise of power as executors in course of administration—Intention of testator—Power exercisable from testator's death—Whether expression 'my Trustees' indicating four named persons without limitation to their capacity as trustees—Whether exercise of power valid. *Re Hayes's Trusts* [1971] 2 341, ChD.

Privileged will. *See* Soldier's and mariner's privileged will, *post*.

Probate. *See* Probate.

Protective trusts—

Deprived of right to capital or interest—

Forfeiture clause. *See* Forfeiture clause—Deprived of right to capital or interest—Protective trusts, *ante*.

Realty—

Option to purchase. *See* Option—Option to purchase realty, *ante*.

Rebuttal of presumption of double portions. *See* Double portions—Rebuttal of presumption, *ante*.

Referential trusts—

Gift to daughter of income of half residuary estate subject to proviso—

£500 after deduction of income tax to be maximum annual income payable to daughter—Surplus income to be paid under other trusts—Statutory variation of tax burden—Sum of £500 'a stated amount'—Finance Act 1941, s 25. *Re Lyons* [1945] 2 438, ChD.

Incorporation of declaration of trust—

Existing declaration 'or any substitution therefor or modification thereof or addition thereto which I may hereafter execute'—Validity of disposition. *Re Jones' Will Trusts* [1942] 1 642, ChD.

Incorporation of trusts of earlier settlement—

Limited power of revocation and appointment reserved to testator by settlement—Reference in will to 'deed or deeds' executed thereafter under power. *Re Schintz's Will Trusts* [1951] 1 1095, ChD.

Property devised to trustees to be held subject to prior life interest—Property to be held on same trusts as created by earlier settlement of another property, the S estates, 'or as nearly corresponding thereto as the circumstances will admit'—S estates settled on testator for life with remainder to sons successively in tail male—Creation of base fee before testator's death—Enlargement to fee simple during prior life interest in property devised. *Re Shelton's Settled Estate* [1945] 1 283, ChD.

Incorporation of trusts of even date—

Disposal of residue by reference to settlement of even date—Incorporation of settlement in will—Effect of failure of one clause in settlement on another clause. *Re Edwards' Will Trusts* [1948] 1 821, CA.

Religion—

Condition. *See* Condition—Religion, *ante*.

Remarriage—

Condition—

Restraint of marriage. *See* Condition—Restraint of marriage—Remarriage, *ante*.

Revocation by remarriage. *See* Revocation—Covenant not to revoke—Revocation by remarriage, *post*.

Residence—

Condition of residence. *See* Condition—Residence, *ante*.

Residue—

Any other personal property—

Gift of money to brother—Gift of other personal property to nephews and nieces—Brother predeceasing testatrix—Whether lapsed gift falling into gift of other personal property. *Re Barnes's Will Trusts* [1972] 2 639, ChD.

Bank account not known to executor—

Money deposited in her own bank by wife—Husband absolutely entitled to interest thereon after wife's death—Necessity for money to be in testator's bank. *Re Lowe's Estate* [1938] 2 774, ChD.

Discretion as to disposition—

Direction to dispose of residuary estate in such manner as sole executor and trustee may in his absolute discretion think fit—Interposition of prior trust to dispose of it in accordance with memoranda—No memorandum left by testator—Trustee was solicitor who drafted will—Whether intestacy as to residuary estate. *Re Pugh's Will Trusts* [1967] 3 337, ChD.

Distribution of property as on intestacy. *See* Distribution of property as on intestacy—Income from residuary estate, *ante*.

WILL (cont)

Residue (cont)—

Division—

Direction to divide equally—Whether division referred to distribution per capita or per stirpes. **Re Daniel** [1945] 2 101, ChD.

Direction to divide equally between nephew and children of cousin absolutely—Whether division referred to distribution per capita or per stirpes—Meaning of word 'between'. **Re Alcock** [1945] 1 613, ChD.

Gift of residue in many and small percentages—Proviso for gift over of all gifts on failure of one—Failure of one gift—Testator's intention—Whether whole residuary gift should fail—Circumstances in which court should add words to give effect to intention. **Re Doland (decd)** [1969] 3 713, ChD.

Double gift—

Construction. **Re Gare (decd)** [1951] 2 863, ChD.

Income from residue—

Income tax—Total income. *See* Income tax (Total income—Income from residue under will).

Intermediate income—

Surplus income after gift of annuity—Capital of residue to be divided in unequal shares after death of annuitant—No express disposition of surplus income during annuitant's life—Intermediate income *prima facie* not carried by deferred residuary gift—Context indicating that gift should carry income—Preference for construction avoiding intestacy—Whether surplus income should be accumulated—Contrary intention within s 69(2) of Trustee Act 1925, excluding s 31(1)(ii). **Re Geering (decd)** [1962] 3 1043, ChD.

Surplus income after gift of two annuities—Capital of residue to be divided after death of first annuitant—No express disposition of surplus income—Gift of capital 'after the death of' person having a limited interest during her life. **Re Wragg (decd)** [1959] 2 717, CA.

Surplus income after payment of annuities—Estate to be divided on death of survivor of annuitants and on trust established for them being wound up—Gift to residuary legatees not vested in possession but a future vested interest subject to defeasance—No express disposition of surplus income during annuitants' lives—All annuitants survived testator and still living—Trust fund as to capital and income to provide for annuitants—Surplus income to be accumulated until death of last survivor of the annuitants or earlier expiration of twenty-one years from testator's death and thereafter as on intestacy. **Re Nash (decd)** [1965] 1 51, ChD.

Residuary legatee—

Real estate not specifically disposed of—Comparative value of real and personal estate—Context—General words passing undisposed real estate. **Re Bailey** [1945] 1 616, ChD.

Specific bequests—

Gift of residue to A and 'thereafter to her issue'—Whether A takes absolutely. **Re Gouk (decd)** [1957] 1 469, ChD.

I 'give and bequeath unto' eleven named persons followed by specific gift to one of them. **Re Turner** [1949] 2 935, ChD.

Residue of my estate 'to be divided equally' between testator's brother and sisters 'during their lifetime'—'After their death to be evenly distributed' between testator's nephew and nieces—Implied gift to survivors or survivor of first takers—Second takers to take per capita on death of last survivor of first takers. **Re Foster** [1946] 1 333, ChD.

Residue to be disposed of as my executors think fit—Executors hold on trust for persons entitled on partial intestacy and do not take beneficially. **Re Carville** [1937] 4 464, ChD.

Restraint of marriage—

Condition. *See* Condition—Restraint of marriage, *ante*.

Revival—

Codicil reviving revoked will—

Codicil to and confirming revoked will but not mentioning second intermediate will which revoked the earlier will—Revoked will revived. **Re Pearson (decd)** [1963] 3 763, ChD.

Earlier will and codicils—Later will revoking earlier—Final codicil expressly confirming earlier will—Absence of appropriate words of revival—Wills Act 1837, s 22. *In the Estate of Taylor* [1938] 1 586, Prob.

Intention appearing on face of codicil—Evidence of surrounding circumstances—Wills Act 1837, s 22. *In the Estate of Davis (decd)* [1952] 2 509, Prob.

Three wills—Later will revoking earlier—Subsequent codicil altering main portions of first will—Absence of express confirmation of first will—Intention to revive first will—Wills Act 1837, s 22. *In the Estate of Mardon* [1944] 2 397, Prob.

Revocation—

Codicil—

Third codicil expressed as first codicil—Whether revoking prior codicils. **Le Cras v Perpetual Trustee Co Ltd** [1967] 3 915, PC.

Conditional revocation—

Condition unfulfilled—Intention of testator—Revocation with intention of making new will—Mutilation or destruction of existing will—Mutilation or destruction effected with a view to making new will—No new will made—Effectiveness of revocation—Test to be applied—Act of revocation ineffective only if testator's intention that revocation should not be effective until new will made—Inference as to testator's intention to be drawn from surrounding circumstances. **Re Jones (deceased)** [1976] 1 593, CA.

Expressed intention to alter will—Delay in carrying out intention. *In the Estate of Bromham* [1952] 1 110, Prob.

Letter of testator admissible as evidence of facts stated—Evidence Act 1938, s 1. *In the Estate of Bridgewater (decd)* [1965] 1 717, Prob.

Name and arms clauses—Codicil expressly revoking clauses in will—New clauses in codicil invalid and ineffective—Whether clauses in will revived. **Re Murray (decd)** [1956] 2 353, ChD.

WILL (cont)

Revocation (cont)—

Conditional revocation (cont)—

Need of evidence of physical destruction of will. **In the Estate of Botting** [1951] 2 997, Prob.

Revocation by codicil of testamentary disposition of German estate—Codicil stating that testatrix had made separate arrangements as to disposal of her German estate—Separate arrangements not effective—Whether foreign estate undisposed of or revocation conditional on effectiveness of such separate arrangements. **Re Feis (decd)** [1963] 3 303, ChD.

Revocation clause in later will—Destruction of earlier will after execution of later will—Destruction in belief later will valid—Later will invalid. **In the Estate of Davies** [1951] 1 920, Assizes.

Revocation clause in later will—Later will though executed left incomplete—Admission of later and earlier wills to probate. **In the Estate of Brown** [1942] 2 176, Prob, **In the Estate of Cocke (decd)** [1960] 2 289, Prob.

Covenant not to revoke—

Revocation by remarriage—Construction of covenant—Wills Act 1837, ss 18, 20. **Re Marsland** [1939] 3 148, CA.

Destruction—

Lower half of first page of will cut away by testator—Effect to excise clause setting out trusts on which residue to be held—Will otherwise complete and properly executed—Whether partial destruction indicating intention to revoke will—Whether will should be admitted to probate in mutilated state. **Re Everest (decd)** [1975] 1 672, FamD.

Strip cut out and ends joined—Presumption of revocation of part cut out—Wills Act 1837, s 20. **In the Estate of Nunn** [1936] 1 555, Prob.

Evidence of revocation—

Oral evidence—Standard of proof required. **Re Wyatt (decd)** [1952] 1 1030, Prob.

Foreign will, by—

Conflict of laws. *See* **Conflict of laws** (Will—Revocation).

Marriage—

Will expressed to be made in contemplation of a marriage not subject to revocation. *See* **Revocation**—Will expressed to be made in contemplation of a marriage, *post*.

Will made in exercise of power of appointment granted by settlement—Settlement providing that in default of appointment property to pass to those entitled on intestacy had the testator died without being married—Person entitled as...next of kin under Statute of Distributions—Testator's widow—Wills Act 1837, s 18. **Re Gilligan (decd)** [1949] 2 401, Prob.

Revocation by written instrument—

Direction to destroy—Wills Act 1837, s 20. **Re Spracklan's Estate** [1938] 2 345, CA.

Revocation by foreign will—First will disposing of real estate in England—Foreign will not executed in accordance with English law. **In the Estate of Alberti (decd)** [1955] 3 730, Prob.

Revocation of foreign will—English will containing revocation clause—Will expressed to apply only to estate in England—Revocation of earlier will made in Belgium and disposing only of property in Belgium. **In the Estate of Wayland** [1951] 2 1041, Prob.

Will expressed to be made in contemplation of a marriage—

Gift in will expressed to be made in contemplation of a marriage—Other gifts containing no such expression—No explicit statement that will itself made in contemplation of a marriage—Whether sufficient expression that will made in contemplation of a marriage—Law of Property Act 1925, s 177. **Re Coleman (decd)** [1975] 1 675, ChD.

Gift to named person described as 'my fiancée'—Whether gift expressed to be made in contemplation of a marriage—Law of Property Act 1925, s 177. **Re Coleman (decd)** [1975] 1 675, ChD.

Gift 'unto my fiancée'—Whether gift expressed to be made in contemplation of a marriage—Law of Property Act 1925, s 177(1). **Re Langston (decd)** [1953] 1 928, Prob.

Revocation of bequest in will—

Codicil. *See* **Codicil**—Revocation of bequest in will, *ante*.

Revocatory clause—

Construction. *See* **Construction**—Revocatory clause, *ante*.

Rule against perpetuities. *See* **Rule against perpetuities**.Rule in *Lassence v Tierney*. *See* **Accruer**—Rule in *Lassence v Tierney*, *ante*.

Satisfaction—

Debts. *See* **Debts**—Satisfaction, *ante*.

Double portions. *See* **Double portions**—Satisfaction, *ante*.

Secret trust. *See* **Trust and trustee** (Secret trust).Selection of gift. *See* **Gift**—Selection, *ante*.

Settled land—

Proceeds of sale. *See* **Will made abroad**—Proceeds of sale of settled land—Whether personality, *post*.

Severability—

Forfeiture clause. *See* **Forfeiture clause**—Severability, *ante*.

Shares—

Gift of shares in company. *See* **Gift**—Shares in company, *ante*.

Option to purchase. *See* **Option**—Option to purchase shares, *ante*.

Shelley v Shelley—

Rule. *See* **Heirlooms**—Descent—Rule in *Shelley v Shelley*, *ante*.

Shifting clause—

Validity—

Uncertainty. **Bromley v Tryon** [1951] 2 1058, HL.

Signature of will—

Acknowledgment of signature. *See* **Attestation**—Acknowledgment of signature, *ante*.

Place of testator's signature. *See* **Execution**—Place of testator's signature, *ante*.

WILL (cont)

- Soldier's or mariner's privileged will—
 - Actual military service—
 - Airmen training in Canada for operational duties—Wills Act 1837, s 11—Wills (Soldiers and Sailors) Act 1918, s 5(2). **Re Wingham (decd)** [1948] 2 908, CA.
 - Death in air raid—Officer living in own house near barracks—Wills Act 1837, s 11. **In the Goods of Gibson** [1941] 2 91, Prob.
 - Home Guard—Instructions to solicitor as civilian—Killed on Home Guard duties—Wills Act 1837, s 11—Army Act s 189(1)—Defence (Home Guard) Regulations 1940, reg 2(1), (2), (3). **In the Estate of Anderson (decd)** [1943] 2 609, Prob.
 - Soldier on leave in England from British army of occupation in Germany—Wills Act 1837, s 11. **In the Estate of Colman (decd)** [1958] 2 35, Prob.
 - Soldier stationed in camp in England—Death in air raid—Wills Act 1837, s 11. **In the Estate of Spark** [1941] 2 782, Prob.
 - Will made before mobilisation and before declaration of war—Soldier called out for service to ensure preparedness for the defence of the realm against external danger—Wills Act 1837, s 11. **In the Estate of Rippon** [1943] 1 676, Prob.
 - Women's Auxiliary Air Force—Wills Act 1837, s 11. **In the Estate of Rowson** [1944] 2 36, Prob.
 - Lost will—
 - Probate—Admissibility of secondary evidence—Statements by testator after execution of will—Cogency of evidence—Letter written after execution of will not a testamentary document. **In the Estate of MacGillivray** [1946] 2 301, CA.
 - Oral declaration—
 - Testamentary intention—Reference to previous disposition—Evidence—Wills Act 1837, s 11. **Re Spicer (decd)** [1949] 2 659, Prob.
 - Oral evidence of intention—
 - Note of oral instructions for will admitted to probate—Whether capable of exercising special power over personality—Wills Act 1837, ss 9, 10, 11, 27—Wills (Soldiers and Sailors) Act 1918, s 3(1). **Re Earl of Chichester's Will Trusts** [1946] 1 722, ChD.
 - Seaman at sea—
 - Document made in contemplation of voyage—Alteration—Presumption of alteration while 'at sea'—Wills Act 1837, s 11. **In the Estate of Newland** [1952] 1 841, Prob.
 - Nuncupative will made in contemplation of voyage—Wills Act 1837, s 11. **In the Estate of Wilson** [1952] 1 852, Prob.
 - Oral statement—Testamentary act—Casual conversation—No intention that statement to be acted on by person to whom statement made—Wills Act 1837, s 11. **In the Estate of Knibbs** [1962] 2 829, Prob.
- Solicitor—
 - Attestation—
 - Witness. *See* Attestation—Witness—Solicitor, *ante*.
 - Negligence—
 - Damages—*See* Solicitor (Negligence—Damages—Will).
 - Residuary bequest to solicitor. *See* Solicitor (Gift by client to solicitor).
 - Trustee. *See* Solicitor (Will—Trustee).
- Solicitor's practice—
 - Gift. *See* Gift—Business—Solicitor's practice, *ante*.
- Soundness of mind—
 - Testator. *See* Testator—Soundness of mind, *post*.
- Specific bequests—
 - Generally. *See* Gift—Specific bequests, *ante*.
 - Residue. *See* Residue—Specific bequests, *ante*.
- Specific bequests. *See* Gift—Specific bequests, *ante*.
- Specific conditions. *See* Conditions, *ante*.
- Specific donees. *See* Gift—Specific donees, *ante*.
- Substitutional gift. *See* Gift—Substitutional gift, *ante*.
- Superfluous signature—
 - Attestation. *See* Attestation—Attestation clause—Superfluous signature, *ante*.
- Surviving—
 - My surviving children—
 - Gift to testator's surviving children if any child should die without leaving issue—Interpretation of 'survive' or 'survivor'. **Re James's Will Trusts** [1960] 3 744, ChD.
 - Survive—
 - Gift to such children of son as shall survive testator—Son unmarried at date of will and date of death of testator. **Re Hodgson (decd)** [1952] 1 769, ChD.
 - Gift to such of children of granddaughter as shall survive testator—Testator eighty years old at date of will—Granddaughter married for five years at that time—One child born in his lifetime and living after his death, others born after his death. **Re Alsopp (decd)** [1967] 2 1056, CA.
 - Surviving two events—
 - Satisfaction of requirement by persons living at date of second event only. **Re Castle's Will Trusts** [1948] 2 927, ChD.
- Survivor—
 - Gift subject to life interest to three persons 'or the survivors or survivor of them'. **Re Douglas's Will Trusts** [1959] 3 785, CA.
- Testamentary disposition—
 - Exercise of power—
 - Nomination—Pension scheme—Power to appoint nominee to receive contributions in event of employee's death before entitlement to pension—Power testamentary in character—Whether exercise of power a testamentary disposition—Whether need to comply with statutory requirements as to testamentary papers—Wills Act 1837. **Re Danish Bacon Co Ltd Staff Pension Fund** [1971] 1 486, ChD.

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Domiciled in England—Attested holograph will made in Scotland not requiring attestation—
Legatee wife of attesting witness—Wills Act 1837, ss 15, 35—Wills Act 1861, s 2. **Re Priest (decd)** [1944] 1 51, ChD.

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Testator a paranoid psychopath—Insane delusion affecting one clause of last codicil—
Pronouncement for all dispositions deleting the one clause. **In the Estate of Bohrmann**
[1938] 1 271, Prob.

Testator enfeebled by disease—Delusion concerning relatives. **Battan Singh v Amirchand**
[1948] 1 152, PC.

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Discretionary power to divide the corpus—Time when such power may be exercised.
Magee v Magee [1936] 3 15, PC.

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- Prosecution. *See* **Criminal law** (Trial—Prosecution—Withdrawal).
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Workman's acceptance of compensation—Onus of proof. **Olsen v Magnesium Castings & Products Ltd** [1947] 1 333, CA.

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Acceptance by workman of certified scheme—Effect on right to sue independently of Act—Whether workman and dependants precluded from maintaining action by terms of separate contract—*Fatal Accidents Act 1846*,—*Workmen's Compensation Act 1925*, ss 29 31. **Coe v London and North Eastern Ry Co** [1943] 2 61, CA.

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Change in rates of remuneration—Alteration in working hours—Same wage paid for 44 hour week as previously paid for 48 hour week, with same rates of overtime as before—*Workmen's Compensation Act 1943*, s 6(1). **Shaw v Rootes Securities Ltd** [1948] 2 168, CA, *Railway Executive v Culkyn* [1950] 2 637, HL.

Change in rates of remuneration—Miner paid a rate per shift—Normal working week reduced from six shifts, paid at rate of 25s per shift, to five consecutive shifts, paid at rate of 25s per shift, with a bonus of 25s if full qualifying five shifts worked—*Workmen's Compensation Act 1943*, s 6(1). **Dyde v National Coal Board (Stafford Colliery Unit)** [1948] 2 172, CA.

Computation of workman's average weekly earnings—

Change of grade—Adoption of classification of employees by employers—*Workmen's Compensation Act 1925*, s 10(i). **Cocker v Sheffield Corp'n** [1941] 2 34, CA.

Concurrent contracts of service—Collier acting as sub-check-weighman and collector of union subscriptions—*Workmen's Compensation Act 1925*, s 10(ii). **Unworth v Pease and Partners Ltd** [1937] 2 817, CA.

Concurrent contracts of service—One contract of service where workman is not a 'workman' within the Act—*Workmen's Compensation Act 1925*, ss 3(2)(e), 10(ii). **McMahon v David Lawson Ltd** [1944] 1 36, HL.

Shortage of work—Voluntary spreadover agreement—Senior man—Custom for junior workman to be withdrawn first—Rate of remuneration—*Workmen's Compensation Act 1925*, s 10(i). **Morgan v Tareni Colliery Co Ltd** [1937] 4 505, CA.

Fatal accident—

Calculation of lump sum—Deduction of weekly payments—Outdoor relief given to deceased workman—Amount not repaid by employers—Claim to deduct amount owing from sum payable to dependant—Weekly payments—*Workmen's Compensation Act 1925*, ss 8(2) (iii), 41. **Boswell v Partridge, Jones and John Paton Ltd** [1941] 2 740, CA.

Employment by local authority under scheme for relief of unemployment—Employment for nine weeks—Whether employment casual—*Workmen's Compensation Act 1925*, ss 8(2), 10. **Summers v Rhondda Urban District Council** [1938] 3 585, CA.

Partial incapacity—

Calculation of amount workman is earning or is able to earn—Workman voluntarily joining Army—Inclusion of allowances and of family allowance paid direct to wife—*Workmen's Compensation Act 1925*, s 9(3). **Doncaster Amalgamated Collieries Ltd v Leech** [1941] 2 7, CA.

Calculation of average weekly earnings before accident—Basis of calculation—Change from full time to half-time during period of 12 months prior to accident—Rate of pay per hour unchanged—No change of grade of employment—*Workmen's Compensation Act 1925*, ss 9(3), 10(iii). **Wyatt v John Knight Ltd** [1945] 1 602, CA.

Declaration of liability—Earnings not diminished by injury—Illness causing workman's return to employment in which earnings diminished by injury—*Workmen's Compensation Act 1925*, ss 1, 9(3)(i). **Everett v Associated Equipment Co Ltd** [1947] 2 132, CA.

Difference between average pre-accident earnings and amount workman able to earn in suitable employment after accident—Changes in economic position of labour market—*Workmen's Compensation Act 1925*, s 9(3)(i). **Sharplin v W B Bawn & Co Ltd** [1947] 1 436, CA.

Difference between average pre-accident earnings and amount workman able to earn in suitable employment after accident—Down-grading of war-time 'dilutee'—*Workmen's Compensation Act 1925*, s 9(3)(i). **Plater v Consett Iron Co Ltd** [1947] 2 460, CA.

Difference between average pre-accident earnings and amount workman able to earn in suitable employment after accident—Economic changes arising since accident—*Workmen's Compensation Act 1925*, s 9(3)(i). **Illston and Robson Ltd v Smith** [1948] 1 834, HL.

Difference between average pre-accident earnings and amount able to earn in suitable employment after accident—Meaning of suitable employment—Workman's loss of eye—Offer of employment—Danger of injury to remaining eye—Whether 'suitable employment'—*Workmen's Compensation Act 1925*, s 9(3)(i). **R Hoe & Co Ltd v Dirs** [1940] 4 297, CA.

Injured workman called up for military service—Army pay and allowances would have been higher but for injury—Inability to obtain suitable employment—*Workmen's Compensation Act 1925*, s 9(3)—*National Service (Armed Forces) Act 1939*. **Baggs v London Graving Dock Co Ltd** [1943] 1 426, CA.

Injured workman called up for military service—Pay and allowances in army less than pre-accident wages but probably more than in civil employment—Compensation only for actual loss—*Workmen's Compensation Act 1925*, s 9(3)(i). **Heaney v B A Collieries Ltd** [1944] 2 289, CA.

Light work provided by employer at pre-accident wage—Subsequent total incapacity through illness unconnected with accident—Compensation during illness—*Workmen's Compensation Act 1925*, ss 1(1), 9(1)(3). **McCann v Scottish Co-operative Laundry Assn Ltd** [1936] 1 475, HL.

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Amount of compensation (cont)—

Partial incapacity (cont)—

Workman employed after accident in different trade—Post-accident employment subject to trade board—No application made to remunerate as learner or as disabled man—Wages paid less than minimum rate—Full minimum rate to be brought into account in assessing compensation for partial incapacity—Trade Boards Act 1909, s 6(3)—Trade Boards Act 1918, ss 4, 5(5), 9(1),(2)—Workmen's Compensation Act 1925, s 9(3)(i)—Boot and Shoe Repairing Trade (Great Britain) Order D (76), 1943. *Leslie Powers v R Bowyer & Sons* [1945] 1 664, CA.

Two accidents—

Partial capacity at time of second accident—Total incapacity from second. *Evans v Oakdale Navigation Collieries Ltd* [1939] 2 358, CA.

Workman receiving compensation for partial incapacity—Second accident resulting in total incapacity—Workmen's Compensation Act 1925, s 9(1)(c). *Doudie v Kinneil, Cannell and Coking Coal Co Ltd* [1947] 1 6, HL.

Arbitration—

Use of knowledge of local conditions by arbitrator—

Wage-earning capacity of workman. *Reynolds v Llanelly Associated Tinplate Co Ltd* [1948] 1 140, CA.

Award—

Appeal—

Award of arrears of compensation but terminating weekly payments—Appeal against termination of weekly payments—Arrears and costs of arbitration accepted by workman's solicitors—Approval and reprobation—Workmen's Compensation Act 1925, Sch I, para 4—RSC Ord 58, rr 4, 20(d). *Lissenden v C A V Bosch Ltd* [1940] 1 425, HL.

Bar to appeal—Approval of award by accepting costs. *Jones v Smith* [1936] 1 661, CA.

Decision on question of law—Finding of arbitrator forming the basis of an award—Workman's notional pre-accident average weekly earnings—Workmen's Compensation Act 1925, Sch I, para 4. *Dyde v National Coal Board (Stafford Colliery Unit)* [1948] 2 172, CA.

Form of award—

Compensation paid on footing of total incapacity—Employers offering to continue payments only at reduced rate on footing of partial incapacity—Claim by workman for arbitration—Answer by employers admitting liability at reduced rate—Form of award—Workmen's Compensation Act 1925, s 21—Workmen's Compensation Rules 1926 (S R & O 1926 No 448), r 18(3). *Howard v Charles P Kinnell & Co Ltd* [1939] 1 34, CA.

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Claim for compensation—

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Time limit—

Exception—Failure to make claim within limitation period due to reasonable cause—Widow of workman pursuing other remedy—Failure through misjoinder of parties—Further proceedings barred by lapse of time—Whether reasonable cause for not making claim within prescribed period—Workmen's Compensation Act 1925, s 14. *Harris v James Howden & Co (Land) Ltd* [1939] 3 34, CA.

Costs of arbitration and proceedings connected therewith—

Discretion of judge to order payment into court—

Review of taxation—Limitation of power of judge to vary quantum of costs taxed by registrar—County Courts Act 1888, s 118—Workmen's Compensation Act 1925, Sch I, para 7—Workmen's Compensation Rules 1926 (S R & O 1926 No 448), rr 8, 29, 76, 78—County Court Rules 1903—1935, Ord 53. *White v Altrincham Urban District Council* [1936] 1 923, CA.

Jurisdiction—

Travelling expenses of workman attending for examination by medical referee—No arbitration actual or pending—Jurisdiction of county court judge—Workmen's Compensation Act 1925, s 19(2), Sch I, para 7—Workmen's Compensation Rules 1926 (S R & O 1926 No 448), rr 57(9), 76(4). *Halliday v Barber, Walker & Co Ltd* [1947] 1 595, HL.

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Declaration of liability—

Grounds for grant of declaration—

No present incapacity—Incapacity due to disfigurement—No physical inability to do the work. *Cole v United Dairies Ltd* [1940] 4 318, CA.

Dependants entitled to compensation—

Members of workman's family dependent on the earnings of the workman at the time of his death—

Fatal accident to workman while temporarily employed as lorry driver—Usual earnings not from contracts of employment but from own business of radio engineer—Whether dependants entitled to compensation—Dependent upon the earnings of the workman at the time of his death—Earnings—Workmen's Compensation Act 1925, ss 1, 3 4(1), 8, 10(i)—Workmen's Compensation (Temporary Increases) Act 1943, s 2(2). *Rogers v Henlys Ltd* [1945] 1 423, CA.

Election of remedy—

Claim by workman's solicitor for compensation under Workmen's Compensation Acts—

Workman not informed of common law remedy—Right to recover damages at common law—Workmen's Compensation Act 1925, s 29(1). *Griffiths v Evans* [1953] 2 1364, CA.

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Election of remedy (cont)—

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Failure of claim—Workmen's compensation assessed but no certificate issued—Whether election made—Workmen's Compensation Act 1925, s 29(2). **Kennedy v Walker** [1944] 1 177, CA.

Receipt of compensation—

Father acting as son's agent—Request for payments of compensation to son—Workmen's Compensation Act 1925, s 29(1). **Deane v H F Edwards & Co Ltd** [1941] 3 331, CA.

Infant—Whether contract for infant's benefit—Workmen's Compensation Act 1925, s 29. **Stimson v Standard Telephones and Cables Ltd** [1939] 4 225, CA.

Knowledge of workman—Receipt signed 'without prejudice'—Onus of proof where unequivocal act proved—Workmen's Compensation Act 1925, s 29(1). **Burke and Unsworth v Elder Dempster Lines Ltd** [1940] 1 362, CA.

Knowledge of workman—Workmen's Compensation Act 1925, s 29(1). **Selwood v Towneley Coal and Fireclay Co Ltd** [1939] 4 34, CA, **Young v Bristol Aeroplane Co Ltd** [1946] 1 98, HL, **Leathley v John Fowler & Co Ltd** [1946] 2 326, CA.

Notice to employer that payments being received without prejudice—Workmen's Compensation Act 1925, s 29(1), (2). **Perkins v Hugh Stevenson & Sons Ltd** [1939] 3 697, CA.

Recorded agreement for compensation—Benefit of infant—Estoppel by record—Workmen's Compensation Act 1925, ss 23, 25(4), 29(1). **Arabian v Tuffnall & Taylor Ltd** [1944] 2 317, KBD.

Widow and child dependants—

Claim by widow under Fatal Accidents Acts and Law Reform (Miscellaneous Provisions) Act 1934—Claim by child to lump sum and children's allowance under Workmen's Compensation Act 1925—Workmen's Compensation Act 1925, s 8(1). **Robinson v London Brick Co Ltd** [1943] 1 23, HL.

Infant dependants claiming compensation—Widow proceeding under Fatal Accidents Act—Workmen's Compensation Act 1925, ss 8(3)(ii), 29. **Taylor v Sir William Arrol & Co Ltd** [1937] 1 658, KBD.

Proceedings by children but not by widow of deceased—Amount recoverable by children—Workmen's Compensation Act 1925, ss 8, 10, 29(1). **Avery v London & North Eastern Ry Co** [1938] 2 592, HL.

Employments excluded by statute—

Fishing crew remunerated mainly by share in profits—

Mainly—Workmen's Compensation Act 1925, s 35(2). **Miller v The Owners of the Ship Ottilie** [1944] 1 277, CA.

Evidence—

Injury by accident arising out of and in the course of employment. *See* Injury by accident arising out of and in the course of employment—Evidence, *post*.

Form of order—

Condition to be incorporated in order. *See* Partial incapacity treated as total incapacity—Form of order—Condition to be incorporated in order, *post*.

Indemnity—

Contractor and sub-contractor—

Negligence of contractor—Whether negligence of contractor answer to claim for indemnity—Workmen's Compensation Act 1925, s 6. **Heywood and Bryett Ltd v A Heywood & Son** [1940] 2 483, CA.

Employers' claim to indemnity—

Claim paid—Further claim—Whether *res judicata*—Workmen's Compensation Act 1925, s 30. **Attorney-General v Arthur Ryan Automobiles Ltd** [1938] 1 361, CA.

Employer's claim to indemnity—

Loan of workman—Employer—Person other than the employer—Workmen's Compensation Act 1925, ss 5, 30. **Doxford & Sons Ltd v Furness Shipbuilding Co Ltd** [1937] 4 334, CA.

Indemnity to employer by third party causing injury—

Death of third party—Claim against estate—Workmen's Compensation Act 1925, s 30(2)—Law Reform (Miscellaneous Provisions) Act 1934, s 1(3)(4). **Post Office v Official Solicitor** [1951] 1 522, KBD.

Industrial disease—

Appeal to medical referee—

Appeal out of time—Extension of time by registrar—Good cause—Necessity for existence of facts showing good cause—Workmen's Compensation Act 1925, s 43—Medical Referees Regulations 1932 (S R & O 1932 No 960), reg 25. **Conroy v Thomas Wilkinson & Sons Ltd** [1938] 1 668, CA.

Cataract—

Compensation only payable for four months from date of disablement unless workman has undergone operation—Proviso enabling arbitrator to continue payments if 'satisfied on the advice of the medical referee that an operation could not for medical reasons be performed within four months'—Could not for medical reasons—Workmen's Compensation Act 1925, s 43, Sch III—Workmen's Compensation (Industrial Diseases) Consolidation Order 1929 (S R & O 1929 No 2), para (3), proviso (a)—Workmen's Compensation (Cataract) Order 1932, (S R & O 1932 No 424). **Skelding v Perrins** [1947] 1 490, CA.

Compensation only payable for four months from date of disablement unless workman has undergone operation—Proviso enabling arbitrator to continue payments if satisfied on advice of medical referee that operation within four months of disablement inadvisable—Power to continue payments only exercisable on advice of medical referee—Workmen's Compensation Act 1925, s 43, Sch I, para 11—Workmen's Compensation (Industrial Diseases) Consolidation Order 1929, (S R & O 1929 No 2)—Workmen's Compensation (Cataract) Order 1932, (S R & O 1932 No 424). **Green v Samuel Woodhouse & Sons** [1945] 1 683, CA.

WORKMEN'S COMPENSATION (cont)**Industrial disease (cont)—****Certifying surgeon's certificate—**

Certificate given after 5th July 1948 in respect of disablement suffered before that date—Workmen's Compensation Act 1925, s 43(1)(2)—National Insurance (Industrial Injuries) Act 1946, s 89(1)(a). **Harris v Rotol Ltd** [1950] 1 867, CA.

Certificate of disablement given after 5th July 1948—Workman not insured against disease—National Insurance (Industrial Injuries) Act 1946, s 89(1), proviso (a). **Holloway v Mobberley and Perry Ltd** [1951] 2 627, HL.

Limit to conclusiveness—Whether disease such as could reasonably be attributed to nature of employment—Onus of proof—Workmen's Compensation Act 1925, s 43. **Hopwood v Textile Paper Tube Co Ltd** [1946] 1 618, CA.

Date of disablement—

Finality of medical referee's certificate on certified matters. **Savage v Nightingale** [1937] 3 30, CA.

Recovery not complete—Return to former work—Second certificate of disablement but no date of commencement stated—Whether date of second certificate conclusive evidence as to the commencement of the second disablement—Workmen's Compensation Act 1925, s 43. **Walder v Mono Concrete Co Ltd** [1943] 2 306, CA.

Dermatitis—

Attack before 5th July 1948—Recurrence after that date—Workman insured under National Insurance (Industrial Injuries) Act 1946—Right of workman to workmen's compensation. **Hales v Bolton Leathers Ltd** [1951] 1 643, HL.

Disease contracted after two months' exposure to liquids capable of producing dermatitis—Workman disabled only for employment in particular process in which disease contracted—Long continued exposure—Right to declaration of liability—Workmen's Compensation (Industrial Diseases) Consolidation Order 1929, (S R & O 1929 No 2), para (2). **Sloman v Harris Lebus (a firm)** [1948] 1 133, CA.

Disease contracted whilst workman in employment of other employer—

Recovery of contribution from other employer—Meaning of 'other employer'—Coal industry—Nationalisation—Miner suffering from gradual disease—Compensation paid by National Coal Board—Right of board to contribution from miner's employers before nationalisation. **National Coal Board v Amalgamated Anthracite Collieries Ltd** [1951] 1 844, CA.

Employer from whom compensation recoverable—

Incomplete recovery from disease contracted more than 12 months before date of disablement—Liability of employers within the 12 months—Employment to the nature of which the disease was due—Workmen's Compensation Act 1925, s 43. **Eaton v George Wimpey & Co Ltd** [1937] 4 583, CA.

Injury by accident—

Date of accident—Death of workman without obtaining certificate and while not in receipt of compensation—Whether date of accident date of death—Workmen's Compensation Act 1925, ss 1(1), 43(1)(iii)(a)(2)(b). **Mayer and Sherratt v Co-operative Insurance Society Ltd** [1939] 3 158, CA.

Jurisdiction to award compensation—

False statement in writing by workman that he had not suffered from miner's nystagmus—Payment of compensation with notice that workman had previously suffered—Statutory agreement—Jurisdiction to make award in spite of misrepresentation—Workmen's Compensation Act 1925, ss 21, 23, 43(1)(b). **Pease and Partners Ltd v Birch** [1941] 1 343, CA.

Likelihood of recurrence of disease—

Workman recovered but liable to a relapse—Whether still incapacitated. **Rees v Powell Duffryn Associated Collieries Ltd** [1938] 1 743, CA.

Medical referee's certificate—

Variation of certifying surgeon's certificate—Form—'Therefore' used instead of 'thereby'. **Homer v Donisthorpe Colliery Co Ltd** [1936] 3 534, CA.

Miner's nystagmus—

Disablement—Recovery from disease not complete—Return to former work at higher wages—Cessation of disablement—Workmen's Compensation Act 1925, s 43(1)(a). **Richards v Goskar** [1936] 3 839, HL.

Order of registrar for reference to medical referee—

Order of judge dismissing appeal therefrom—Whether orders of registrar and judge final or interlocutory—Workmen's Compensation Act 1906, Sch 1 para 15—Workmen's Compensation Act 1923, s 11—Workmen's Compensation Act 1925, ss 17 18 19—Workmen's Compensation Rules 1913—1924 rr 57 76—Workmen's Compensation Rules 1926 (S R & O 1926 No 448) r 1(2)—County Court Rules 1903-1922 Ord 12 r 11. **Brown v Sherwood** [1940] 2 25, CA.

Pneumoconiosis—

Compensation—Agreement for lump sum in redemption of weekly payments—Registration of memorandum of agreement—Objection by approved society with which workman insured—Duty of registrar—Workmen's Compensation Act 1925, ss 13, 23, 25—Coal Mining Industry (Pneumoconiosis) Compensation Scheme 1943, (S R & O 1943 No 885), paras 4, 14(1). **R v Pontypridd, Aberdare and Mountain Ash and Tredegar County Court Registrars, ex parte National Amalgamated Approved Society** [1948] 1 218, KBD.

Suspension due to pneumoconiosis—Compensation—Contribution by previous employer to compensation payable by last employer—Recorded agreement by last employer to pay lump sum in lieu of weekly payment payable under Scheme—Liability of previous employer to contribute to lump sum payment—'Compensation'—Coal Mining Industry (Pneumoconiosis) Compensation Scheme 1943, (S R & O 1943 No 885), paras 8, 9(2)(a). **Amalgamated Anthracite Collieries Ltd v Cory Bros & Co Ltd** [1946] 1 232, CA.

WORKMEN'S COMPENSATION (cont)

Industrial disease (cont)—

Pneumoconiosis (cont)—

Suspension due to pneumoconiosis—Workman not totally disabled—Rate of compensation payable while workman unable to obtain employment—Workmen's Compensation Act 1925, ss 9, 47—Workmen's Compensation Act 1943, s 1—Coal Mining Industry (Pneumoconiosis) Compensation Scheme 1943, (S R & O 1943 No 885), paras 4, 9. **Poxon v Woolaton Collieries Ltd** [1945] 1 6, CA.

Proceedings for recovery of compensation—

Time limit—Disability stated to have commenced more than six months before date of certificate—Notice of claim—Whether reasonable cause for failure to make claim within specified period—Workmen's Compensation Act 1925, ss 14(1), 43(1). **Easterling v Peek, Frean & Co Ltd** [1938] 1 674, CA.

Right to compensation—

Notional accident—Total incapacity—Further 'notional accident' during incapacity caused by first 'accident'—Nystagmus followed by pneumoconiosis or silicosis—Partial capacity recovered—Right to compensation in respect of second 'notional accident'—Workmen's Compensation Act 1925, ss 1, 9, 43, 47—Various Industries (Silicosis) Scheme 1931, (S R & O 1931 No 342), para 9(2)(a)—Coal Mining Industry (Pneumoconiosis) Compensation Scheme 1943, (S R & O 1943 No 885), para 9(3). **Amalgamated Anthracite Collieries Ltd v Wiids** [1948] 2 252, HL.

Widow's claim on workman's death—Certificate by medical referee negating scheduled disease—Conclusiveness against dependants—Workmen's Compensation Act 1925, s 43 (1)(f). **Huxley v Wharnccliffe Woodmoor Colliery Co Ltd** [1948] 1 572, HL.

Silicosis—

Amount of compensation—Partial incapacity from first accident at time of certification of silicosis—Amount of compensation for silicosis—Workmen's Compensation Act 1925, ss 9, 43, 47—Various Industries (Silicosis) Scheme 1931, (S R & O 1931 No 342), paras 5, 8, 9. **Evans v Oakdale Navigation Collieries Ltd** [1940] 2 201, CA.

Application of scheme—Matters for consideration—Authorisation by employers of process employed—Whether workman employed in the process—Various Industries (Silicosis) Scheme 1931, (S R & O 1931 No 342), para 2(viii)(c). **Brownsword v Ley's Malleable Casting Co Ltd** [1948] 1 119, CA.

Certificate of medical board—Conclusiveness—'Conditions not associated with disease'—Silicosis and Asbestosis (Medical Arrangements) Scheme 1931, arts 3, 5. **Williams v Tredegar Iron and Coal Co Ltd** [1948] 1 236, CA.

Crushing bricks—Breaking down furnace lining of silica bricks—Various Industries (Silicosis) Scheme 1931, (S R & O 1931 No 342), para 2(viii)(a). **Forster v Llanelly Steel Co (1907) Ltd** [1941] 1 1, HL.

Process—Any operation underground in any coal-mine—Workman not exposed to dust from silica rock—Various Industries (Silicosis) Scheme 1931, (S R & O 1931 No 342), para 2—Various Industries (Silicosis) Amendment Scheme 1934, (S R & O 1934 No 1155). **Wragg v Samuel Fox & Co Ltd, Charlesworth v Same** [1937] 2 157, HL.

Stonemason—Workman exposed to silica dust from time to time—Whether employed in scheduled process—Successive employers—Whether workman should be directly engaged in a type of work specified in the Scheme—Workmen's Compensation Act 1925, s 47—Various Industries (Silicosis) Scheme 1931, (S R & O 1931 No 342). **Reece v Ministry of Supply and Ministry of Works and Planning** [1945] 1 239, CA.

Infant—

Election of remedy—

Receipt of compensation. *See* Election of remedy—Receipt of compensation—Infant, *ante*.

Infant workman—Review of compensation. *See* Review of compensation—Infant workman, *post*.

Injury by accident arising out of and in the course of employment—

Acceleration of disease by accident—

Evidence—Heart disease—Acceleration due to employment. **Whittle v Ebbw Vale Steel, Iron & Coal Co Ltd** [1936] 2 1221, CA.

Evidence—Heart disease—Contributing to death of workman—Temporary recovery. **Hilton v Billington & Newton Ltd** [1936] 3 292, CA.

Evidence—Heart disease—Whether death accelerated by work—Evidence of physiological injury or change due to work. **Oates v Earl Fitzwilliam's Collieries Co** [1939] 2 498, CA.

Accident happening between spells of duty—

Time between spells except for 45 minutes meal time paid for by employers—Workman proceeding from one point to another—Time and route at workman's discretion—Workman proceeding for purposes of his own—Whether accident arose out of and in the course of the employment. **Edwards v London Passenger Transport Board** [1943] 2 241, CA.

Act contrary to statutory provision and employers' regulations—

Mineworker riding on tub—Workmen's Compensation Act 1925, s 1(2). **Seviour v Somerset Collieries Ltd** [1940] 1 649, CA.

Act deemed to arise out of and in the course of employment—

Act done for the purposes of and in connection with the employer's trade or business—Van-driver leaving van to get intoxicating liquor—Prohibition against consuming intoxicating liquor while on duty—Driver killed while remounting van—Workmen's Compensation Act 1925, s 1(1)(2). **Knowles v Southern Ry Co** [1937] 2 403, HL.

Permitted act done in manner contrary to regulations—Mineworker riding on limber of tubs—Workmen's Compensation Act 1925, s 1(2). **Riley v Wearmouth Coal Co Ltd** [1940] 4 342, CA.

Railway employee killed while walking along line—Forbidden route—Whether act done for purposes of employers' business—Workmen's Compensation Act 1925, s 1(2). **Noble v Southern Ry Co** [1940] 2 383, HL.

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Injury by accident arising out of and in the course of employment (cont)—

Act done in emergency—

No great danger—Stoppage of employers' work. *Dermody v Higgs and Hill Ltd* [1937] 4 379, CA.

Boy employed to repair telephone apparatus—

Condition of employment that he should attend gymnasium class—Accident while attending class. *Lucas v Postmaster-General* [1939] 3 660, CA.

Canteen on same premises as factory—

Workmen permitted but not compelled to use canteen—Workman injured by dart while in canteen—Whether accident arising out of and in the course of his employment. *Knight v Howard Wall Ltd* [1938] 4 667, CA.

Coal mine—

Hauling coal—Hauling divided into four operations—One operation allotted to each of four boys—Allocation of operations altered from time to time—Applicant injured while performing operation not allotted to him—Whether applicant acting within the scope of his employment—Workmen's Compensation Act 1925, s 1(2). *Hawker v Doncaster Amalgamated Collieries Ltd* [1938] 4 577, CA.

Commencement of employment—

Accident on way to work—Contractual obligation to proceed by most expeditious route—Workmen's Compensation Act 1925, s 1(1). *Dunn v A G Lockwood & Co* [1947] 1 446, CA.

Accident on way to work—Emergency work—Payment commencing from time of leaving home—Workmen's Compensation Act 1925, s 1(1). *Blee v London and North Eastern Ry Co* [1937] 4 270, HL.

Accident on way to work—Private halt owned by railway but completely enclosed by colliery premises—Collier injured while boarding train—No duty or obligation to use train—Workmen's Compensation Act 1925, s 1(1). *Weaver v Tredegar Iron and Coal Co Ltd* [1940] 3 157, HL.

Accident within company's premises—Workman on way to 'clock in' before starting work—

Accident where public allowed to cross company's premises, although no right of way—Workmen's Compensation Act 1925, s 1(1). *Hill v Butterley Co Ltd* [1948] 1 233, CA.

Death due to burns—

Bottle of petrol accidentally dropped near fire—Act not prohibited—Whether act arising out of employment—Workmen's Compensation Act 1925, s 1(1). *Blanning v C H Bailey Ltd* [1942] 2 562, CA.

Disease as injury caused by accident—

Succession of accidental injuries—Cumulative effect—Vibrations caused by rapidly rotating instrument—Raynaud's disease. *Fitzsimons v Ford Motor Co Ltd* [1946] 1 429, CA.

Domestic servant taking master's tea to field—

Riding horse back to farm—Injuries received when horse bolted—Whether accident arose out of employment—Workmen's Compensation Act 1925, s 1(1). *Scott v Seymour* [1941] 2 717, CA.

Driver of tractor to which scraper was attached—

Injury arising from adjusting a defect in the scraper—No prohibition or instruction from employers as to workman's duty regarding adjustment—Dangerous act for purposes of employer's trade or business—Whether risk incidental to employment—Workmen's Compensation Act 1925, s 1(1)(2). *Slavin v A M Carmichael & Co Ltd* [1945] 1 292, HL.

Epileptic riding bicycle on employer's business—

Accident resulting from epileptic fit—Injuries sustained from falling off bicycle—Whether accident arising out of employment. *Martin v Finch* [1937] 2 631, CA.

Evidence—

No evidence of cause of accident—Compensation paid after notice of accident—Whether payments evidence that accident happened in course of employment. *Way v Penrhybyr Navigation Colliery Co Ltd* [1940] 1 164, CA.

No evidence of cause of injury—Reasonable inference—Delay in notice of accident—Reasonable cause—Workmen's Compensation Act 1925, ss 1(1), 14. *Ellison v Calvert & Heald* [1936] 3 467, HL.

External event—

Need for—Death of worker on way to work due to auricular fibrillation—Whether need for external event—Workers' Compensation Act 1928 (Victoria) (No 3806 of 1928), s 5(1), as amended by Workers' Compensation Act 1946, (Victoria) (No 5128 of 1946), s 3. *James Patrick & Co Proprietary Ltd v Sharpe* [1954] 3 216, PC.

Interruption of employment—

Railwayman in lodgings away from home—Accident between lodgings and railway station—Workmen's Compensation Act 1925, s 1. *Alderman v Great Western Ry Co* [1937] 2 408, HL.

Meaning of accident—

Continuous process—Diseased hip caused by working pneumatic drill—Process extending over 20 years—Workmen's Compensation Act 1925, s 1(1). *Roberts v Penrhyn* (Lord) [1949] 1 891, CA.

Disease existing before date of incapacity—Workman incapacitated while working as packer—Dropped foot—Loss of power of dorsiflexion—Workmen's Compensation Act 1925, s 1(1). *Fife Coal Co Ltd v Young* [1940] 2 85, HL.

Disease of gradual onset—No specific event to which injury referable. *Ormond v C D Holmes & Co Ltd* [1937] 2 795, CA.

Epileptic drowned—No danger to normal healthy person—Disease not sole cause of death—Workmen's Compensation Act 1925, s 1(1). *Wilson v Chatterton* [1946] 1 431, CA.

WORKMEN'S COMPENSATION (cont)

Injury by accident arising out of and in the course of employment—

Meaning of accident—

Incapacity due to hernia—Existing condition aggravated by use of pneumatic drill—

Cumulative effect. **Hughes v Lancaster Steam Coal Collieries Ltd** [1947] 2 556, CA.

Tuberculosis—Hospital nurse subjected to repeated attacks of tuberculosis germs—Whether injury by accident—Workmen's Compensation Act 1925, s 1(1). **Pyrar v Doncaster Corp** [1949] 1 883, CA.

Novus actus interveniens—

Defective medical treatment—Injury not discovered until too late for successful treatment—

Incapacity due to defective medical treatment—Workman not entitled to compensation—

Workmen's Compensation Act 1925, ss 9(1), 12(3), 19(4). **Rothwell v Caverswall Stone Co Ltd** [1944] 2 350, CA.

Onus of proof—

Disease due to silica dust—Workers' Compensation Act 1926—1929, ss 5, 6, 7 (New South Wales). **Metropolitan Coal Co Ltd v Pye** [1936] 1 919, PC.

Explosion of firedamp in mine—Cause of ignition of firedamp inexplicable—Workmen's Compensation Act 1925, s 1. **Cadzow Coal Co Ltd v Price** [1944] 1 54, HL.

Proof of accident—

Unexplained death—Night watchman found gassed—Workmen's Compensation Act 1925, s 1(1). **Alexander v J Dickinson & Sons Ltd** [1939] 3 204, CA.

Risk attaching to particular locality—

Engine fireman hit by pellet from airgun aimed at engine. **Powell v Great Western Ry Co** [1940] 1 87, CA.

Sailor—

Return to ship after shore leave—Fall from mole—Police stationed at entrance to mole, but public allowed entry—Workmen's Compensation Act 1925, s 1(1). **Jenkins v Elder Dempster Lines Ltd** [1953] 2 1133, CA.

Ship sent to mosquito-infested area—Death from yellow-fever and/or malaria—Dangerous locality—Whether death due to injury arising out of his employment—Workmen's Compensation Act 1925, s 1(1). **Craig v Dover Navigation Co Ltd** [1939] 4 558, HL.

Servant delivering petrol at garage—

Servant throwing away lighted match after lighting cigarette—Whether act done in the course of his employment. **Century Insurance Co Ltd v Northern Ireland Road Transport Board** [1942] 1 491, HL.

Silicosis—

Slate worker—Injury to lungs by inhalation of dust—Continuous process extending over a period of time—Workmen's Compensation Act 1925, s 1(1). **Roberts v Dorothea Slate Quarries Co Ltd** [1948] 2 201, HL.

Worker developing silicosis long after she left employment—Compensation not payable for silicosis at date of worker leaving employment—Later Act providing that compensation to be payable in respect of silicosis due to nature of employment 'at any time' prior to disablement—Victoria Workers Compensation Act 1951 (No 5601), s 12(1). **Sunshine Porcelain Potteries Proprietary Ltd v Nash** [1961] 3 203, PC.

Termination of employment—

Accident occurring after termination of employment—Custom for workmen arriving late to be replaced by others—Whether accident arising out of and in the course of employment—Workmen's Compensation Act 1925, s 1(1). **M'Garvey v Caledonia Stevedoring Co Ltd** [1943] 1 611, HL.

Painter employed by contractor on outlying work—Place of work 11 miles from workman's home—Travelling allowance paid in addition to remuneration—Workman fatally injured while riding home after finishing work—Journeys of workman not forming part of his service—Accident not arising out of and in the course of employment. **Netherton v Coles** [1945] 1 227, CA.

Workman adjusting defective machinery in motion in contravention of regulation—

Dangerous act for purposes of employers' trade or business—Whether accident arising out of and in course of employment—Workmen's Compensation Act 1925, s 1(1)(2). **Victoria Spinning Co (Rochdale) Ltd v Matthews** [1936] 2 1359, HL.

Workman at place of employment in time of danger—

Fellow employee tampering with shell from enemy aeroplane—Employees forbidden to do anything but employers' work—Workmen's Compensation Act 1925, s 1(1). **Smith v Davey Paxman & Co (Colchester) Ltd** [1943] 1 286, CA.

Workman drying leggings—

Permitted act—Act done rashly—Added peril—Whether act arising out of the employment—Workmen's Compensation Act 1925, s 1(1). **Harris v Associated Portland Cement Manufacturers Ltd** [1938] 4 831, HL.

Workman going to employers' pay office to draw pay—

Jumping on passing lorry—Collision between lorry and trucks—Workmen's Compensation Act 1925, s 1(1). **Campbell v Proud's Engineering Co Ltd** [1947] 2 97, CA.

Insolvency of employer—

Liability of insurers to workman—

Mutual indemnity society—Non-payment of calls—Workmen's Compensation Act 1925, s 7. **Wooding v Monmouthshire & South Wales Mutual Indemnity Society Ltd** [1939] 4 570, HL.

Notional accident—

Right to compensation. *See* Industrial disease—Right to compensation—Notional accident, *ante*.

Novus actus interveniens—

Defective medical treatment. *See* Injury by accident arising out of and in the course of employment—Novus actus interveniens—Defective medical treatment, *ante*.

Partial incapacity. *See* Amount of compensation—Partial incapacity, *ante*.

WORKMEN'S COMPENSATION (cont)

Partial incapacity treated as total incapacity—

Circumstances in which permissible—

Fitness of workman for light work only—Workmen's Compensation Act 1925, s 9(4)—Workmen's Compensation Act 1931, s 1(1). **Robert Addie & Sons Collieries Ltd v McCracken** [1936] 3 1039, HL.

Where probable workman would but for continuing effects of injury be able to obtain 'work in the same grade in the same class of employment as before the accident'—Whether employment other than employment at time of accident included—Workmen's Compensation Act 1925, s 9(4)—Workmen's Compensation Act 1931, s 1(1). **Palmer v Watts, Watts & Co Ltd** [1937] 3 241, CA.

Workman never unfit for any kind of work—Necessity for previous total incapacity—Workmen's Compensation Act 1925, s 9(4)—Workmen's Compensation Act 1931, s 1—Coal Mining Industry (Pneumoconiosis) Compensation Scheme 1943 (S R & O 1943 No 885), para 9(2). **James v Amalgamated Anthracite Collieries Ltd** [1945] 2 584, CA.

Form of order—

Condition to be incorporated in order—Wording of condition—Workmen's Compensation Act 1925, s 9(4)—Workmen's Compensation Act 1931, s 1. **Dan & Stone Ltd v Lennard** [1941] 1 101, CA.

Inability to obtain employment—

Complete recovery from injury—Refusal of employers to employ man previously injured—Inability to obtain employment due to accident—Workmen's Compensation Act 1925, s 9. **White v William Pickersgill & Sons Ltd** [1941] 2 656, CA.

Contract of employment terminated—Probability of obtaining same class of work as before—Workmen's Compensation Act 1925, s 9(4)—Workmen's Compensation Act 1931, s 1. **Ebbw Vale Steel, Iron and Coal Co Ltd v Williams** [1936] 1 835, CA.

Steps taken to obtain employment—Whether all reasonable steps taken—Whether onus of proof on employer or on workman—Workmen's Compensation Act 1925, s 9(4)—Workmen's Compensation Act 1931, s 1(1). **McLaughlin v Caledonia Stevedoring Co Ltd** [1938] 3 72, HL.

Redemption of weekly payment—

Agreement both to provide work and to pay compensation—

Basis of redemption. **Pick v Paling** [1936] 2 1291, CA.

Payment continued for six months—

Amount of payment varied within the six months—Whether redemption available—Workmen's Compensation Act 1925, s 13. **Davis v Cambrian Wagon Works Ltd** [1941] 1 460, CA.

Reference to medical referee—

Application for reference—

Consideration by registrar of medical reports not submitted to other side—Whether registrar can consider such reports—Workmen's Compensation Act 1925, ss 12(3), 19(2)—Workmen's Compensation Rules 1926 (S R & O 1926 No 448), r 57(2)—County Court Rules 1936, Ord 13, r 1. **Llay Main Collieries Ltd v Jones** [1939] 1 8, CA.

Previous medical referee no longer available—Exceptional difficulty—Medical certificate signed in firm name of a partnership of doctors—Report—Certificate—Workmen's Compensation Act 1925, ss 12(3), 19(2). **Cartwright v Lilleshall Co Ltd** [1937] 4 242, CA.

Medical referee's certificate—

Certificate ambiguous—Whether any unambiguous part conclusive—Whether judge bound to send certificate back for explanation—Workmen's Compensation Act 1925, s 19. **Morgan & Co v Thomas** [1938] 1 696, CA.

Conclusiveness—Certificate of employer's doctor failing to comply with statutory requirements—Imperfect copy—Compliance with statute essential—Effect on conclusiveness of medical referee's certificate—Workmen's Compensation Act 1925, s 12(3). **Hill v Ladyshore Coal Co (1930) Ltd** [1936] 3 299, CA.

Remitted by registrar without consulting parties—Jurisdiction of registrar—Workmen's Compensation Act 1925, s 19(2)—Workmen's Compensation Rules 1926 (S R & O 1926 No 448), r 57. **Burgoyne v Rose Bridge Colliery Co Ltd** [1936] 1 743, CA.

Workman wholly recovered from injury by accident but unfit for ordinary work—Further reference to referee as to whether condition attributable to accident—Report that condition not attributable to accident—Whether arbitrator justified in ending compensation—Workmen's Compensation Act 1925, s 19(2)(3)(4). **Robert Addie & Sons Collieries Ltd v McAllister, Burns v Garscube Colliery Co Ltd** [1937] 1 676, HL.

Review of compensation—

Applicability of Limitation Act 1939—

Claim made under the Workmen's Compensation Act 1906—Workmen's Compensation Act 1906, Sch 1, para 16—Limitation Act 1939, s 2(2)(d)(3). **Leivers v Barber, Walker & Co Ltd** [1943] 1 386, CA.

Application for review—

Admission that incapacity due to accident—Declaration of liability—Evidence that incapacity would have been the same even if there had been no accident—Whether right to review barred. **London Power Co Ltd v Lamb** [1936] 3 392, CA.

Voluntary payment of compensation—Notice to reduce—No counter-notice—Reduced payments accepted for six months without complaint—Implied agreement—Application for review treated as original application for arbitration—Workmen's Compensation Act 1925, ss 11, 12, 21. **Harding v H & E Waters Ltd** [1936] 3 891, CA.

Change of circumstances—

What constitutes a 'change of circumstances'—Workmen's Compensation Act 1925, s 11. **Ramsay v Gramophone Co Ltd** [1936] 2 752, CA.

WORKMEN'S COMPENSATION (cont)

Review of compensation (cont)—

Fluctuation in rates of remuneration—

Claims based on rises of more than 20 per cent in rates of remuneration during the 12 months immediately preceding the review—Whether the date at which 'review' takes place is date of right accruing or date of application for variation—*Workmen's Compensation Act 1925, s 11(2)(3). Willis v New Hucknall Colliery Co Ltd [1944] 1 209, HL.*

Increase in basic rate of wages—Increase of more than 20 per cent—Poundage—Increase in total amount of poundage but not in rate of poundage—*Workmen's Compensation Act 1925, s 11(3). Trawlers (Grimsby) Ltd v Crouchen [1943] 1 253, CA.*

Increase in basic rate of wages—Increase of more than 20 per cent—Whether fact that less work available should be considered—*Workmen's Compensation Act 1925, s 11(3). Hill v Wolverhampton Corrugated Iron Co Ltd [1939] 3 72, CA.*

Increase in basic rate of wages—Increase of more than 20 per cent—Whether 'risk rate' should be considered—*Workmen's Compensation Act 1925, s 11(3). Shirley v Fisher Renwick Ltd [1943] 1 262, CA.*

Workman entitled to compensation under 1897 Act—Review on fluctuation in wage rates—*Workmen's Compensation Act 1925, ss 11(3), 50(2). Mullet v Powell Duffryn Associated Collieries Ltd [1943] 2 281, CA.*

Infant workman—

Fluctuation in rates of remuneration—Fluctuation of more than 20 per cent since 12 months previous to review—Whether review includes review upon infant attaining full age—*Workmen's Compensation Act 1925, s 11(2)(3). Potts v Pope and Pearson Ltd [1940] 2 263, CA.*

Time within which application must be made—Meaning of 'review'—Change in probable earnings at a date later than application but prior to hearing—*Workmen's Compensation Act 1925, s 11(2)—Workmen's Compensation Act 1926, s 1. Dobson Ship Repairing Co Ltd v Burton [1939] 3 431, HL.*

Partial incapacity treated as total incapacity—

Failure to take reasonable steps to find employment—Change of circumstances—*Workmen's Compensation Act 1931, s 1. United Dairies (London) Ltd v Stirling [1936] 3 272, CA.*

Right to compensation—

Incapacity for work resulting from injury—

Injured workman called up for military service—Pay and allowances in army less than pre-accident wages—Whether inability to earn pre-accident wages due to injury—Whether entitled to compensation—*Workmen's Compensation Act 1925, s 9(3)(i)—National Service (Armed Forces) Act 1939. Jones v Amalgamated Anthracite Collieries Ltd [1944] 1 1, HL.*

Novus actus interveniens—Improper medical treatment—Ill-advised operation on injured thumb—Incapacity due to tender stump—*Workmen's Compensation Act 1925, s 9(1). Hogan v Bentinck West Hartley Collieries (Owners) Ltd [1949] 1 588, HL.*

Incapacity to work resulting from injury—

Loss of finger—Workman employed after accident at former work for 13 years at former rate of wages—Illness not due to employment preventing workman from working—No evidence of seeking to obtain work—*Workmen's Compensation Act 1925, s 9(1). Parr v Richard Haworth & Co Ltd [1940] 3 43, CA.*

Injury by accident arising out of and in the course of employment. *See* Injury by accident arising out of and in the course of employment, *ante*.

Two accidents—

Total incapacity from first accident—Second accident supervening—Right to compensation for second accident. *Wheatley v Lambton, Hetton and Joicey Collieries Ltd [1937] 2 756, CA.*

Statute abolishing right to compensation. *See* Industrial injury (Workmen's compensation—Right to compensation—Statute abolishing right).

Termination of compensation—

Incapacity for work resulting from refusal of workman to undergo operation—

Reasonableness of refusal—Operation necessitating provision of artificial limb. *Redpath Brown & Co Ltd v Hayes [1942] 1 298, CA.*

Reasonableness of refusal—Question of fact—Private examination and report by medical assessor—Functions of medical assessor sitting with arbitrator. *Richardson v Redpath Brown & Co Ltd [1944] 1 110, HL.*

Reasonableness of refusal—Question of fact. *Steele v Robert George & Co Ltd [1942] 1 447, HL.*

Whether incapacity due to accident or to refusal to undergo surgical operation—Absence of request by employers—Unreasonable conduct. *Purvis v Goole Steam Shipping (London, Midland and Scottish Ry) [1937] 4 345, CA.*

Objection by workman—

Reference to medical referee—Medical referee's certificate—Interpretation by registrar—Arbitration proceedings started by workman—Jurisdiction of judge to entertain pending decision by registrar—*Workmen's Compensation Act 1925, ss 12(3), 19(2). Starkey v Whitwhich Colliery Co Ltd [1947] 1 464, CA.*

Two accidents. *See* Amount of compensation—Two accidents, *ante*.

Voluntary payment of compensation—

Application for review. *See* Review of compensation—Application for review—Voluntary payment of compensation, *ante*.

Workman—

Person who enters into or works under contract of service with employer—

Farmer—Deed of assignment for benefit of creditors—Trustee appointed by creditors—Farmer continuing to manage farm—Accident—Whether contract of service with trustee—*Workmen's Compensation Act 1925, s 3(1). Easdown v Cobb [1940] 1 49, HL.*

WORKMEN'S COMPENSATION (cont)

Workman (cont)—

Person who enters into or works under contract of service with employer (cont)—

Governing director of company—Director exercising full and unrestricted control of company's affairs but also working for company as pilot and being paid wages—Death of governing director while acting as pilot on company's business—Whether contract of service with company—*New Zealand Workers' Compensation Act 1922*, (1922, No 39), s 2. *Lee v Lee's Air Farming Ltd* [1960] 3 420, PC.

Hospital nurse—Injury while preparing a poultice—Whether working under a contract of service—*Workmen's Compensation Act 1925*, s 3. *Wardell v Kent County Council* [1938] 3 473, CA.

Salvation Army officer—Whether a 'workman'—*Workmen's Compensation Act 1925*, s 3. *Rogers v Booth* [1937] 2 751, CA.

WORKROOM

Factory—

Ventilation. *See* **Factory** (Ventilation—Workroom).

WOUNDING

Intent to cause grievous bodily harm. *See* **Criminal law** (Grievous bodily harm—Wounding with intent to cause grievous bodily harm).

Generally. *See* **Criminal law** (Wounding).

WRECK

Expenses of raising wreck—

Removal of wreck—

Limitation of liability. *See* **Shipping** (Limitation of liability—Wreck removal—Wreck-raising expenses).

Expenses of raising wreck. *See* **Shipping** (Wreck—Raising expenses).

Removal of wreck. *See* **Shipping** (Wreck removal).

WRECK COMMISSIONER

Discretion—

Costs—

Collision. *See* **Shipping** (Collision—Costs—Discretion of wreck commissioner).

WRECK

Removal of wreck—

Limitation of liability. *See* **Shipping** (Limitation of liability—Wreck removal).

WRIT

Action under Fatal Accidents Acts—

Extension of validity. *See* Extension of validity—Action under Fatal Accidents Acts, *post*.

Additional relief—

Amendment—

Indorsement. *See* Indorsement—Amendment—Additional relief, *post*.

Admiralty—

Action in personam. *See* **Admiralty** (Practice—Action in personam—Writ).

Action in rem. *See* **Admiralty** (Practice—Action in rem—Writ).

Amendment—

Admiralty action in rem. *See* **Admiralty** (Practice—Action in rem—Writ—Amendment).

Amendment after expiry of limitation period—

Amendment to be allowed if just—RSC Ord 20 r 5(1). *Sterman v E W & W J Moore Ltd (a firm)* [1970] 1 581, CA.

Bringing in second defendant—Leave to amend within limitation period—Failure to amend within 14 days allowed—Application for extension of time to amend writ after limitation period expired—Refusal of leave for late service—Whether second defendant a party—RSC Ord 15, r 8(4). *Braniff v Holland & Hannen & Cubitts (Southern) Ltd* [1969] 3 959, CA.

Claim under Fatal Accidents Acts—Widow claiming as administratrix—Writ issued before grant of letters of administration—Decision in *Ingall v Moran*—Application to amend writ by suing as dependant—Application made after statutory period—Amendment not allowed—Fatal Accidents Act 1846—Fatal Accidents Act 1864—RSC Ord 3, r 4. *Hilton v Sutton Steam Laundry (a firm)* [1945] 2 425, CA.

Defendant substituted—Son R S P substituted for father R J P—Limitation period expired—Action for personal injuries in road accident—Genuine mistake and intended defendant not misled—Whether rule of court permitting amendment *ultra vires*—Whether leave to amend just in the circumstances—Supreme Court of Judicature (Consolidation) Act 1925, s 99(1), Sch 1—RSC Ord 20, r 5. *Rodriguez v Parker* [1966] 2 349, QBD.

Name of party—Amendment of writ to change defendant 'W J D & Co (a firm)' to 'W J D & Co Ltd'—Whether a correction of a mere misnomer—Whether omission of 'Limited' meant that no person was sued—Amendment sought after limitation period expired. *Whittam v W J Daniel & Co Ltd* [1961] 3 796, CA.

Defect in title—

Failure to indicate Division of High Court—Whether capable of being rectified by amendment—Supreme Court of Judicature (Consolidation) Act 1925, s 58—RSC Ord 2, r 1, Ord 20, rr 1(1), 5. *Brady v Barrow Steelworks Ltd* [1965] 2 639, QBD.

Indorsement. *See* Indorsement—Amendment, *post*.

New cause of action in statement of claim—

New action statute-barred—New cause of action arising out of substantially the same facts as action in writ—Architect employed on construction of building—Writ alleging negligence in superintending work—Statement of claim alleging negligence in design and superintendence—Power to amend writ—Exercise of discretion—RSC Ord 18, r 15(2), Ord 20 r 5(1)(5). *Brickfield Properties Ltd v Newton* [1971] 3 328, CA.

WRIT (cont)

Amendment (cont)—

Parties— *See Practice* (Parties—Adding defendant—Amendment of writ).

Appearance to—

Admiralty—

Writ in rem. *See Admiralty* (Practice—Appearance).

Claim under Fatal Accidents Acts—

Amendment after expiry of limitation period. *See Amendment*—Amendment after expiry of limitation period—Claim under Fatal Accidents Acts, *ante*.

Cause of action—

Statement on indorsement. *See Indorsement*—Cause of action—Statement on indorsement, *post*.

Cause of action statute-barred

Extension of validity. *See Extension of validity*—Cause of action statute-barred, *post*.Defect in indorsement. *See Indorsement*—Defect in indorsement, *post*.

Defect in title—

Amendment. *See Divorce* (Practice—Writ—Form).

Divorce registry, issued out of—

Form. *See Divorce* (Practice—Writ—Form).

Extension of validity—

Action under Fatal Accidents Acts—

Writ issued within the 12 months limited by Act—Not served within 12 months of date of issue—Discretion of court to extend time for service—RSC Ord 8, rr 1, 2, Ord 64, r 7. **Battersby v Anglo-American Oil Co Ltd** [1944] 2 387, CA.Writ issued within the 12 months limited by Act—Not served within 12 months of date of issue—Discretion of court to extend time for service—RSC Ord 64, r 7. **Holman v George Elliot & Co Ltd** [1944] 1 639, CA.

Application—

Order for renewal made in absence of application—Validity of order—Application for leave to serve concurrent writ out of jurisdiction—Good and sufficient cause for renewal but no application made—Whether master having power to make order for renewal—RSC Ord 6, r 8(2). **Bugden v Ministry of Defence** [1972] 1 1, CA.

Cause of action statute-barred—

Writ issued before cause of action statute-barred but not served—Application for extension made within 12 months of issue of writ—Burden on applicant to show good cause for extension—Defendants registered company—Service by post at very end of 12 months attempted—Address of registered office of company given by local director of defendants and not completely correct—Copy writ returned undelivered—Legal aid needs not a factor in exercise of discretion to extend validity of writ—RSC Ord 6, r 8(1)(2)—Legal Aid and Advice Act 1949, s 1(7)(b). **Baker v Bowketts Cakes Ltd** [1966] 2 290, CA.

Cause of action statute-barred—

Writ issued before cause of action statute-barred but not served—Extension granted within 12 months of issue of writ—Writ served after limitation period had expired—Conditional appearance entered by defendants—Application to set aside service of writ—Burden on applicant to show good cause for renewal of writ—RSC Ord 6, r 8(2). **Stevens v Services Window & General Cleaning Co Ltd** [1967] 1 984, QBD.

Cause of action statute-barred—

Writ not served—Application for extension made after 12 months' validity had expired and after three years' statutory limitation period on action—Extension not granted in the absence of exceptional circumstances—RSC Ord 6, r 8(1), (2). **Heaven v Road and Rail Waggons Ltd** [1965] 2 409, QBD.

Good and sufficient reason for extension—

Discretion—Balance of hardship between parties—Writ not served within time on one of two defendants—Failure due to reasonable mistake of law by plaintiff's solicitor—Plaintiff clearly entitled to remedy against one or other of defendants—No remedy available on facts against plaintiff's solicitor. **Jones v Jones** [1970] 3 47, CA.Negotiations for settlement—Negotiations proceeding when application made to extend validity of writ—Whether negotiations affording sufficient reason for not serving writ within time or for renewal of writ—RSC Ord 6, r 8(2). **Easy v Universal Anchorage Co Ltd** [1974] 2 1105, CA.Negotiations for settlement—RSC Ord 8, r 1. **The Prins Bernhard** [1963] 3 735, Adm.

Jurisdiction—

Principles on which renewal granted—Writ issued to prevent Statute of Limitations running—Writ not served on defendants—Application for renewal after expiry of writ—RSC Ord 8, rr 1, Ord 64, 7. **E Ltd v C** [1959] 2 468, ChD.

Order for renewal—

Amendment of order—Action against public authority—Writ issued within time limit—Order for renewal of writ made before writ expired—Seal bearing date of renewal not affixed to writ before writ expired—Jurisdiction of master to amend renewal order—RSC Ord 8, rr 1, 2. **Duchin v Swanage Urban District Council** [1954] 2 817, QBD.

Fatal accident—

Liability admitted—

Writ issued more than 12 months after death. *See Limitation of action* (Fatal accident).Fi fa. *See Execution* (Writ of fi fa).

Foreign company—

Service on company. *See Service on company*—Foreign company, *post*.

Foreign defendant—

Service on defendant when on visit to England—

Stay of proceedings. *See Practice* (Stay of proceedings—Foreign defendant—Writ served on defendant whilst on short visit to England).Habeas corpus. *See Habeas corpus*.

WRIT (cont)

Indorsement—

Amendment—

Additional relief—Leave given to serve notice out of jurisdiction—Subsequent application to amend writ by claiming additional relief—Additional relief such that leave to serve out of jurisdiction permissible—Additional relief such that leave to serve out of jurisdiction would not have been granted—Whether court having jurisdiction to refuse leave to amend on that ground—RSC Ord 11, r 1(1), Ord 20, r 5(1). **Beck v Value Capital Ltd (No 2)** [1974] 3 442, ChD.

Cause of action—

Statement on indorsement—Whether cause of action should be stated on indorsement—RSC Ord 6, r 2(1). **Sterman v E W & W J Moore Ltd (a firm)** [1970] 1 581, CA.

Defect in indorsement—

Cause of action not disclosed—Irregularity curable by statement of claim—Writ not a nullity—Delay of four months in applying to set aside writ—Whether writ should be set aside—Whether service of writ should be set aside—RSC Ord 70, rr 1, 2. **Pontin v Wood** [1962] 1 294, CA.

Cure by statement of claim—Effectiveness of writ—Issue of writ within limitation period—Service with statement of claim after expiration of period—Defect in writ cured by statement of claim—Competency of action—Limitation Act 1939, s 21(1). **Hill v Luton Corp'n** [1951] 1 1028, KBD.

Cure by statement of claim—Summons to set aside service—Statement of claim delivered after service but before hearing of summons. **Grounsell v Cuthell** [1952] 2 QBD.

Signature—

Specially indorsed writ—Signed by solicitor—Served copy bearing no signature—Appearance entered—Waiver of defective service by defendant—RSC Ord 3, r 6(1), Ord 14, r 1(a), Ord 19, r 4. **Fick and Fick Ltd v Assimakis** [1958] 3 182, CA.

Issue—

Defendant dead at date of issue—

Effect on proceedings. *See Practice* (Parties—Substitution—Action against deceased person—Defendant dead at date of issue of writ—Substitution of executors).

Issue out of Central Office—

Application—Application by post—RSC Ord 6. **Practice Direction** [1971] 1 519.

Time—

Limitation period prescribed by statute—Period expiring on day court offices closed—Writ issued on first day thereafter that court offices open—Effect—Fatal Accidents Act 1846, s 3, as amended by the Law Reform (Limitation of Actions, etc) Act 1954, s 3—Limitation Act 1939, s 2(1), as amended by the Law Reform (Limitation of Actions, etc) Act 1954, s 2(1). **Pritam Kaur (Administratrix of Bikar Singh (deceased)) v S Russell & Sons Ltd** [1973] 1 617, CA.

Issue against member of Parliament. *See Parliament* (Privilege—Action against member of Parliament).

Libel action—

Issue—

Republication of alleged libel—Effect. *See Contempt of court* (Republication of alleged libel—Pending proceedings).

Mortgage—

Action commenced by writ—

Judgment in default of appearance. *See Mortgage* (Action by mortgagee for possession—Action commenced by writ).

Ne exeat regno. See Equity (*Ne exeat regno*).

Negotiations for settlement—

Extension of validity. *See Extension of validity*—Good and sufficient reason for extension—Negotiations for settlement, *ante*.

New cause of action in statement of claim. *See Amendment*—New cause of action in statement of claim, *ante*.

Order for renewal—

Amendment of order. *See Extension of validity*—Order for renewal—Amendment of order, *ante*.

Originating summons—

Continuation of proceedings as if begun by writ. *See Originating summons* (Continuation of proceedings as if begun by writ).

Parties—

Action in name of company incorporated in foreign state—

Liquidation of company by de facto government recognised by British Government—Effect of existence of de jure monarch—Validity of action by person not having authority of liquidator. **Bank of Ethiopia v National Bank of Egypt and Liguori** [1937] 3 8, ChD.

Possession—

Leave to issue writ. *See Execution* (Possession—Leave to issue writ).

Wrongful and irregular execution. *See Execution* (Wrongful and irregular execution—Writ of possession).

Principles on which renewal granted. *See Extension of validity*—Jurisdiction—Principles on which renewal granted, *ante*.

Probate—

Issue by registrar. *See Probate* (Practice—Writ—Issue of writ).

Renewal—

Admiralty action in personam. *See Admiralty* (Practice—Action in personam—Writ—Renewal).

Admiralty action in rem. *See Admiralty* (Practice—Action in rem—Writ—Renewal).

Sequestration—

Position of third parties in relation to writ of sequestration. *See Contempt of court* (Sequestration—Position of third parties in relation to writ of sequestration).

WRIT (cont)

Service—

Admiralty action in personam. *See* **Admiralty** (Practice—Action in personam—Writ—Service).

Admiralty action in rem. *See* **Admiralty** (Practice—Action in rem—Writ—Service).

Foreign defendant—

Service on defendant when on visit to England—Stay of proceedings. *See* **Practice** (Stay of proceedings—Foreign defendant—Writ served on defendant whilst on short visit to England).

Service. *See* **Practice** (Service).

Service—

Service on foreign company. *See* **Company** (Foreign company—Writ—Service of writ on company).

Service out of jurisdiction. *See* **Practice** (Service—Service out of jurisdiction).

Service out of the jurisdiction. *See* **Practice** (Service out of the jurisdiction).

Service on company—

Foreign company—

Action by Commissioners of Customs and Excise for condemnation of seized goods—Notice of claim by solicitors in London acting on behalf of foreign company—Writ served on solicitors more than a year later—Customs and Excise Act 1952, Sch 7, para 4—RSC Ord 13, r 2. **Comrs of Customs and Excise v IFS Irish Fully Fashioned Stockings Ltd** [1957] 1 108, QBD.

Company having no place of business in Great Britain—Service at address alleged to be former place of business—Validity of service—Companies Act 1948, s 412. **Deverall v Grant Advertising Inc** [1954] 3 389, CA.

Registered office—

Service at registered office—RSC Ord 67, r 3. **Addis Ltd v Berkeley Supplies Ltd** [1964] 2 753, ChD.

Service by post—

Date of service—Writ endorsed with claim for liquidated demand—Judgment in default of appearance—Copy of writ not received by company 14 days prior to judgment—Application to set aside judgment—Service deemed to have been effected on date when letter would have been received in ordinary course of post—Date of deemed service 14 days prior to date of judgment—Proof to the contrary—Proof that writ never delivered at company's registered office—Interpretation Act 1889, s 26. **Thomas Bishop Ltd v Helmville Ltd** [1972] 1 756, CA.

Writ not received by company—Judgment in default of appearance—Company having changed address four weeks before issue of writ—Company having failed to notify registrar of companies of new address—Writ sent to address of company's registered office given in companies register—Company not aware of writ until after judgment entered—Whether judgment obtained regularly—Whether company entitled to have judgment set aside ex debito iustitiae—Interpretation Act 1889, s 26—Companies Act 1948, s 437(1)—RSC Ord 13, r 9. **A/S Cathrineholm v Nonequipment Trading Ltd** [1972] 2 538, CA.

Writ not received by company—Judgment in default of appearance—Writ sent to company's registered office—Envelope containing writ returned through dead letter office marked 'not known' six days after judgment—Whether service of writ bad—Whether company entitled to have judgment set aside without regard to the merits—Interpretation Act 1889, s 26—Companies Act 1948, s 437(1). **Saga of Bond Street v Avalon Promotions Ltd** [1972] 2 545, CA.

Service out of jurisdiction—

Action for account. *See* **Account** (Action for—Service—Jurisdiction).

Solicitor—

Delay in issuing and serving writ. *See* **Solicitor** (Litigation—Delay in issuing and serving writ).

Specially indorsed writ. *See* **Indorsement**—Signature—Specially indorsed writ, *ante*.

Subpoena ad testificandum. *See* **Practice** (Subpoena ad testificandum).

Subpoena duces tecum. *See* **Practice** (Subpoena duces tecum).

Time for service of writ. *See* **Practice** (Service—Time for service of writ).

Title to. *See* **Practice** (Parties—Description of parties).

Validity—

Extension of validity. *See* **Extension of validity, ante**.

WRITING

Constructive trust—

Whether necessary. *See* **Trust and trustee** (Constructive trust—Oral arrangements).

Equitable interest—

Disposition. *See* **Equity** (Disposition of equitable interest or trust—Writing).

Printed form—

Inconsistency with writing. *See* **Printed form** (Modification—Writing).

Sale of goods—

Memorandum in writing. *See* **Sale of goods** (Note or memorandum in writing).

Sale of land—

Memorandum of contract. *See* **Sale of land** (Memorandum of contract).

Trust—

Creation of trust—

Transfer of house—Absence of writing. *See* **Trust and trustee** (Constructive trust—Oral arrangements—Voluntary transfer of legal estate).

WRITTEN CONTRACT

Incorporation of oral terms. *See* **Contract** (Incorporation of terms—Express oral term—Incorporation in written contract).

WRITTEN STATEMENT

Evidence in criminal proceedings. *See* **Criminal evidence** (Written statement).

WRONGFUL DISMISSAL

- Damage—
 - Pleading. *See* **Pleading** (Damage—Wrongful dismissal).
- Damages—
 - Contract. *See* **Contract** (Damages for breach—Wrongful dismissal).
- Managing director—
 - Breach of contract. *See* **Company** (Director—Managing director—Wrongful dismissal—Measure of damages).
- Master and servant. *See* **Master and servant** (Wrongful dismissal).
- Pleading—
 - Particulars. *See* **Pleading** (Particulars—Wrongful dismissal).

YACHT

- Sale of—
 - Contract—
 - Construction. *See* **Contract** (Construction—Sale of yacht).

YARD

- Vagrancy—
 - Enclosed yard. *See* **Criminal law** (Vagrancy—Found in enclosed premises for an unlawful purpose—Enclosed yard).

YEARLY HIRING

- See* **Master and servant** (Contract of service—Presumption of yearly hiring).

YOUNG OFFENDER

- Driving while disqualified—
 - Imprisonment. *See* **Road traffic** (Driving while disqualified for holding licence—Imprisonment—Young offender).
- Imprisonment. *See* **Sentence** (Youthful offender—Imprisonment).

YOUNG PERSON

- Court proceedings in respect of. *See* **Children and young persons**
- Criminal offence—
 - Sentence. *See* **Sentence** (Youthful offender).
- Factory—
 - Cleaning machinery. *See* **Factory** (Cleaning machinery—Women and young persons).

ZEBRA CROSSING

- See* **Road traffic** (Pedestrian crossing—Zebra crossing).

ZERO-RATING

- Value added tax. *See* **Value added tax** (Zero-rating).

ZOOLOGICAL GARDENS

- Charitable purpose—
 - Education. *See* **Charity** (Education—Zoo—Zoological gardens).

